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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1933

No. 579

CHARLES ILFELD COMPANY, PETITIONER,

vs.

B. C. HERNANDEZ, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEW MEXICO

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 10, 1933

CERTIORARI GRANTED DECEMBER 18, 1933

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Law. No. 2462

Charles Ilfeld Company, a Corporation, Plaintiff,

vs.

B. C. Hernandez, Collector of Internal Revenue, Defendant

Complaint—Filed March 1, 1932

The plaintiff complains of the defendant and alleges:

I

That the plaintiff is a corporation organized and existing under the laws of the State of New Mexico and is engaged in the business of wholesale merchandizing in the State of New Mexico and has been so engaged during all the times hereinafter mentioned; and that the defendant B. C. Hernandez is the duly appointed, qualified and acting Collector of Internal Revenue for the District of New Mexico, with his office at Albuquerque, New Mexico.

II

The plaintiff further alleges that in the year 1917 the plaintiff purchased all of the capital stock of the Springer [fol. 2] Trading Company, a New Mexico corporation, and operated said Springer Trading Company as an affiliated or subsidiary corporation from the year 1917 up to and until the year 1929; and that in the year 1920 the plaintiff purchased all of the capital stock of the Roy Trading Company, a New Mexico corporation, and operated the Roy Trading Company as an affiliated or subsidiary corporation from the year 1920 up to and until the year 1929; and that during the years that said Springer Trading Company and Roy Trading Company were operated as affiliated or subsidiary companies of the plaintiff, the plaintiff filed affiliated returns as required by the laws of the United States of America and the regulations of the Treasury Department and paid its income tax based on such returns.

III

That the purchase price paid by the plaintiff for all of the stock of the Springer Trading Company in the year of 1917 was the sum of forty thousand ($40,000.00) dollars and that in the year of 1929, the plaintiff sold and disposed of all of the assets of the Springer Trading Company to outside interests and liquidated said corporation as a going concern cancelling its certificates of stock and surrendering its charter; and that the plaintiff derived from the liquidation of said corporation's assets the sum of twenty-two thousand nine hundred fourteen dollars and twenty-two cents ($22,914.22), sustaining a loss on said sale of seventeen thousand eighty-five dollars and seventy-eight cents ($17,085.78); and during the period extending from 1917 to 1929, the plaintiff advanced and loaned to the Springer Trading Company, the sum of sixty-nine thousand thirty dollars and twenty-seven cents ($69,030.27), thereby sustaining a total loss of eighty-six thousand one hundred sixteen dollars and five cents ($86,116.05), all of which was charged off the plaintiff's books at a loss at the close of the year of 1929.

IV

That the purchase price paid by the plaintiff for all of the stock of the Roy Trading Company in the year 1920 was the sum of fifty thousand ($50,000.00) dollars and that in the year of 1929, the plaintiff sold and disposed of all of the assets of the Roy Trading Company to outside interests and liquidated said corporation as a going concern, can- [fol. 3] celling its certificates of stock and surrendering its charter; and that the plaintiff derived from the liquidation of said corporation's assets the sum of fifteen thousand one hundred six dollars and sixteen cents ($15,106.16), thereby sustaining a loss on said sale of thirty-four thousand eight hundred ninety-three dollars and eighty-four cents ($34,893.84); and during the period extending from 1920 to 1929, the plaintiff advanced and loaned to the Roy Trading Company the sum of nine thousand seven hundred eighty-two dollars and twenty-two cents ($9,782.22) thereby sustaining a total loss of forty-four thousand six hundred seventy-six dollars and six cents ($44,676.06), all of which was charged off the plaintiff's books as a loss at the close of the year 1929.

V

That this plaintiff in the year 1930, filed with the defendant Collector of Internal Revenue its consolidated return for the year 1929, without deducting the losses sustained by it on the sales of and loans to the two said subsidiary or affiliated companies, as aforesaid, and paid to the defendant Collector of Internal Revenue the sum of twenty thousand eight hundred thirty-six dollars and twenty cents ($20,836.20) in equal quarterly installments of five thousand two hundred nine dollars and five cents ($5,209.05) each, as follows to-wit:

March 15, 1930, the sum of	$5,209.05
June 15th, 1930, the sum of	5,209.05
Sept. 15th, 1930, the sum of	5,209.05
Dec. 15th, 1930, the sum of	5,209.05
Total	$20,836.20

as its tax for said year and thereafter, to-wit, on the 21st day of August, 1931, this plaintiff filed an amended return and claim for refund for the year 1929 with the Commissioner of Internal Revenue at Washington, D. C., setting up said losses sustained as aforesaid, which said claim for refund in the sum of fourteen thousand four hundred sixty dollars and forty-three cents ($14,460.43) was, by the Commissioner of Internal Revenue of the United States, on the 28th day of January, 1932, wrongfully disallowed.

[fol. 4] VI

That by reason of the losses sustained by this plaintiff on the monies loaned and advanced said subsidiary corporations as aforesaid and by reason of the losses sustained by this plaintiff on the liquidation of said corporations, as aforesaid, this plaintiff overpaid the defendant Collector of Internal Revenue the sum of fourteen thousand four hundred sixty dollars and forty-three cents ($14,460.43), as aforesaid, and there is now due and owing the plaintiff from the defendant the sum of fourteen thousand four hundred sixty dollars and forty-three cents ($14,460.43), no part of which has been paid; and although demand has been made for the payment thereof, the defendant has refused to pay the same.

Wherefore, the plaintiff prays judgment against the defendant in the sum of fourteen thousand four hundred sixty dollars and forty-three cents ($14,460.43), together with interest as follows, to-wit:

6% interest on $3,615.10 from March 15, 1930;
6% interest on $3,615.11 from June 15, 1930;
6% interest on $3,615.11 from Dec. 15, 1930; and
6% interest on $3,615.11 from Dec. 15, 1930, until collected; and its costs in this behalf expended.

A. T. Hannett, 509-11 Sunshine Bldg., Albuquerque, New Mex.

Duly sworn to by Rodney B. Horton. Jurat omitted in printing.

[fol. 5] IN UNITED STATES DISTRICT COURT

ANSWER—Filed April 7, 1932

Comes now the defendant by Hugh B. Woodward, United States Attorney, and Dudley Cornell, Assistant United States Attorney, and answering the complaint herein alleges:

I

Defendant admits the allegations of paragraph numbered one of the complaint.

II

Defendant admits the allegations of paragraph numbered two of the complaint.

III

Defendant admits the purchase price paid by the plaintiff for the stock of the Springer Trading Company in the year 1917 was the sum of $40,000.00, but denies that plaintiff sold and disposed of all the assets of the Springer

Trading Company to outside interests in the year 1929, but alleges the fact to be that from the year 1921 to and including the year 1929, the Springer Trading Company was continuously engaged in selling its assets, and in the year 1929 the last and remaining assets of the said Springer Trading Company were sold to outside interests as alleged in the complaint; defendant admits that in the year 1929 the plaintiff liquidated the said corporation as a going concern and cancelled its certificates of stock and surrendered its charter; defendant admits that plaintiff derived from the said liquidation of the said corporation's assets the sum of $22,914.22, but denies that the said sum was realized in the year 1929, and alleges the fact to be that it was an accumulation from the sale of the assets of the Springer Trading Company from the year 1921 to the year 1929, as alleged above; defendant denies that thereby the plaintiff [fol. 6] sustained a deductible loss of $17,085.78; defendant admits that during the period from 1917 to 1929 plaintiff advanced and loaned to the Springer Trading Company the sum of $69,031.27, but denies that plaintiff sustained a total deductible loss of $[illegible], and denies that all of said alleged loss was charged off the plaintiff's books at the end of the year 1929, and alleges the fact to be that from the year [illegible] to 1929, inclusive, plaintiff filed its consolidated income tax returns wherein the plaintiff availed itself of the deductible operating losses of the subsidiary corporation, the said Springer Trading Company, a total amount in excess of the stock investment and amounts loaned and advanced to the said subsidiary corporation during the period as aforesaid.

IV

Defendant admits that the purchase price paid by the plaintiff for the Roy Trading Company in the year 1920 was the sum of $50,000.00; defendant denies that the plaintiff sold and disposed of all the assets of the Roy Trading Company to outside interests in the year 1929, but alleges the fact to be that from the year 1920 to 1929, inclusive, the Roy Trading Company was continuously engaged in selling its assets to outside interests and that only the remaining and unsold assets were disposed of in the year 1929; defendant admits that in the year 1929 the Roy Trading Company was liquidated as a going concern and its certificate and stock cancelled and its charter surrendered; defendant admits that plaintiff received from the liquidation of said corporation the sum of $15,106.16, but denies that plaintiff thereby sustained a deductible loss of $34,893.84; defendant admits that during the period from 1920 to 1929 plaintiff advanced and loaned to the Roy Trading Company the sum of $9,782.22 but denies that plaintiff thereby sustained a total deductible loss of $44,676.06 and denies that the same was charged off the plaintiff's books as a loss at the close of the year 1929, but alleges the fact to be that from the year 1920 to 1929, inclusive, the plaintiff filed its consolidated income tax return wherein the plaintiff availed itself of the deductible operating losses of the subsidiary corporation, the said Roy Trading Company, a total amount in excess of the stock investment and amounts [fol. 7] loaned and advanced to the said subsidiary corporation during the period as aforesaid.

V

Defendant admits the allegations of paragraph numbered five of the complaint, except that the claim for refund was wrongfully disallowed by the Commissioner of Internal Revenue on the [illegible] day of January, 1932, and alleges the fact to be that the said claim for refund was without merit and was disallowed by the said Commissioner of Internal Revenue under and by virtue of the provisions of the Revenue Act of 1928, and Regulations 75 promulgated by the Commissioner of Internal Revenue as authorized by Section 141-b of the Revenue Act of 1928.

VI

Defendant denies the allegations of paragraph numbered six of the complaint except that the defendant has refused to pay the claim of the plaintiff as alleged.

For further and separate defense to the plaintiff's complaint, defendant alleges:

1

That paragraph 141-b of the Revenue Act of 1928 authorizes the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to prescribe such regulations as he may deem necessary in order that the tax liability of an affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be determined, computed, assessed, collected and adjusted in such manner as clearly to reflect the income and to prevent avoidance of tax liability.

2

That pursuant to such authority the Commissioner of Internal Revenue has prescribed and promulgated its Regulations 75, and Article 37 of said Regulations reads as follows:

"Art. 37.—Dissolutions—Recognition of Gain or Loss

(a) During Consolidated Return Period:

Gain or loss shall not be recognized upon a distribution during a consolidated return period, by a member of an affiliated group to another member of such group, in cancellation or redemption of all or any portion of its stock; and any such distribution shall be considered an intercompany transaction.

(b) After Consolidated Return Period:

Any such distribution after a consolidated return period, whether in complete or partial liquidation, shall be treated as a sale of the stock, and the adjustments specified in articles 34 and 35 will be made, and article 36 will be applicable."

3

That Article 40 of said Regulations 75 contains the following:

"Art. 40.—Bad Debts

(a) Resulting from Transactions During Consolidated Return Period:

Intercompany accounts receivable or other obligations which are the result of inter-company transactions during a consolidated return period shall not be deducted as bad debts during a consolidated return period.

(b) Resulting from Transactions Prior to Consolidated Return Period:

No deduction shall be allowed during a consolidated return period for intercompany accounts receivable or other obligations resulting from intercompany transactions during the period of filing separate returns.

(c) Limitation on Allowance After Consolidated Return Period:

The rules applicable to the allowance of losses upon the sale of bonds shall be applicable to the allowance after the consolidated return period as a bad debt of an intercompany account receivable or other obligation resulting from an intercompany transaction during the consolidated return period."

4

That the liquidation of the said Springer Trading Company and the said Roy Trading Company as alleged in the [fol. 9] plaintiff's complaint constituted distribution during a consolidated return period within the meaning of the provisions of Section 37, Article A of Regulations 75 quoted above; and that the same constituted an intercompany transaction for which no account or loss can be recognized.

Wherefore, defendant prays that the complaint of the plaintiff be dismissed and that the defendant recover its costs herein.

Hugh B. Woodward, United States Attorney, by
Dudley Cornell, Assistant U. S. Attorney.

Duly sworn to by Dudley Cornell. Jurat omitted in printing.

In United States District Court

Reply—Filed May 11, 1932

Now comes the plaintiff and replying to the Answer heretofore filed herein, admits, alleges, and denies as follows:

I

Denies each and every allegation of new matter in Paragraph III of the defendant's Answer as specifically as if the same were denied at length.

II

Denies each and every allegation of new matter in Paragraph IV of the defendant's Answer as specifically as if the same were denied at length.

III

Denies each and every allegation of new matter in Paragraph V of the defendant's Answer as specifically as if the same were denied at length.

[fol. 10]

IV

In replying to Paragraph I of the defendant's further and separate defense to the plaintiff's complaint, the plaintiff says:

That it admits that Paragraph 141-B of the Revenue Act of 1928 authorizes the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to prescribe such regulations as he may deem necessary as alleged in Paragraph I of said further and separate defense.

V

Replying to Paragraph II of the defendant's further and separate defense, the plaintiff admits that pursuant to such authority, the Commissioner of Internal Revenue, has prescribed and promulgated its Regulations 75 and Article 37, but denies that Article 37 applies to the instant case for the reason that the plaintiff never claimed any gain or loss, nor was any gain or loss determined during the period that the plaintiff filed consolidated returns as alleged in his complaint; and further, plaintiff admits that Article 37-B of Regulations 75 applies in the instant case and alleges and says that it refers to Articles 34 and 35 which are applicable to the instant case and set out the basis for determining deductible losses on investments in stock of subsidiary corporations; and the plaintiff further alleges that the rules promulgated by the Commissioner of Internal Revenue, as aforesaid, further provide: "That if the sale is made during a period during which the selling corporation is a member of the affiliated group (whether or not during a consolidated return period) and if, as a result of such sale, the issuing corporation ceases to be a member of the affiliated group, such basis shall be determined as follows:

(1) The aggregate basis of all shares of stock of the issuing corporation held by each member of the group (exclusive of the issuing corporation) immediately prior to the sale, shall be determined separately for each member of the group, and adjusted in accordance with the Act (see Sections 111 to 115 inclusive, of the Act and Articles 561 to 629, inclusive, of Regulations 74);

(2) From the sum of the aggregate bases, as determined [fol. 11] in Paragraph (1) above, there shall be deducted the aggregate of the losses of such issuing corporation sustained during each of the consolidated return periods (including only the taxable year 1929 and subsequent taxable years) after such corporation became a member of the group and prior to the sale of the stock, to the extent that such losses could not have been availed of by such corporation as a net loss in computing its tax for such periods if it had made a separate return for each of such periods."

VI

Replying to Paragraph III of the defendant's further and separate defense, the plaintiff says: that it admits that Regulations 75 and Article 40 apply to the instant case but the plaintiff denies that the transactions mentioned and described in the plaintiff's complaint and the defendant's Answer were inter-company transactions, but alleges and says that the loans and advances made to the subsidiary company were first claimed and deducted as of December 31, 1929, after the consolidation period mentioned and described in the plaintiff's complaint was dissolved in November, 1929; and further, that during the period in which the plaintiff filed consolidated returns, the plaintiff never, at any time was allowed the deductible losses claimed in its complaint, by the said commissioner.

VII

Replying to Paragraph IV of the defendant's further and separate defense, the plaintiff denies each and every allegation of new matter therein contained, as specifically as if the same were denied at length.

Wherefore, having fully replied to the allegations of new matter in the defendant's Answer, the plaintiff prays as in its original Complaint.

A. T. Hannett, 509-11 Sunshine Building, Albuquerque, New Mexico, Attorney for the Plaintiff.

Duly sworn to by Rodney B. Horton. Jurat omitted in printing.

[fol. 12] IN UNITED STATES DISTRICT COURT

WAIVERS OF TRIAL BY JURY—Filed May 25, 1932

Now comes the defendant, by his attorneys Hugh B. Woodward, Esquire, and Dudley Cornell, Esquire, and file this, his written waiver of a trial by jury and request the Court to proceed to hear the issues and decide this cause without the intervention of a jury.

Hugh B. Woodward, United States District Attorney, by Dudley Cornell, Assistant U. S. District Attorney.

Now comes the plaintiff by its attorney A. T. Hannett, Esquire, and files this, its written waiver of a trial by jury and requests the Court to proceed to hear the issues and decide this cause without the intervention of a jury.

A. T. Hannett, 509-11 Sunshine Building, Albuquergue, New Mexico, Attorney for the Plaintiff.

IN UNITED STATES DISTRICT COURT

MOTION FOR JUDGMENT—Filed August 5, 1932

Comes now the defendant, B. C. Hernandez, through his attorneys, Hugh B. Woodward, United States Attorney for the District of New Mexico, Dudley Cornell, Assistant United States Attorney for said District, and Eugene Har-[fol. 13] pole, Special Attorney, Bureau of Internal Revenue, and moves the Court for judgment in behalf of the defendant upon the ground and for the reason that the evidence introduced by the plaintiff is insufficient to support a judgment in his favor.

Dated 5th day of August, 1932.

Hugh B. Woodward, U. S. Attorney, Dudley Cornell, Asst. U. S. Attorney, Eugene Harpole, Special Attorney, Bureau of Internal Revenue, Attorneys for Defendant.

In United States District Court

Request for Special Findings of Fact and Conclusions of Law—Filed August 19, 1932

Comes now the defendant by its attorneys, Hugh B. Woodward, United States Attorney, and Dudley Cornell, Assistant United States Attorney, and Eugene Harpole, Special Attorney of the United States Bureau of Internal Revenue, and requests the Court to make and adopt as its Findings of Fact and Conclusions of Law, in the above entitled case, those Findings of Fact and Conclusions of Law of which a copy is hereto annexed.

Respectfully submitted, Hugh B. Woodward, United States Attorney, by Dudley Cornell, Assistant U. S. Attorney, Eugene Harpole, Special Attorney, U. S. Bureau of Internal Revenue.

Findings of Fact and Conclusions of Law

(Requested)

That above entitled cause came on for trial before the Court sitting without a jury, at Santa Fe, New Mexico, and the Court having heard and considered all of the evidence introduced at said trial and the admissions contained in the pleadings, makes these, the following its findings of fact on said pleadings and evidence:

[fol. 14] I

That the plaintiff is a New Mexico corporation engaged in the wholesale general merchandise business and was so engaged at all times since the year 1917.

II

That the defendant, B. C. Hernandez, is the duly appointed, qualified and acting United States Collector of Internal Revenue with his office at Albuquerque, New Mexico.

III

That the Springer Trading Company was, at all times, from the year 1917 to the 30th day of December, 1929, a New Mexico corporation.

IV

That the Roy Trading Company was, at all times, from the year 1917 to the 30th day of December, 1929, a New Mexico corporation.

V

That the plaintiff was, at all times, from the year 1917 to and including the 30th day of December, 1929, the owner of more than ninety-five (95) per cent of the capital stock of the Springer Trading Company.

VI

That the plaintiff was, at all times, from the year 1920 to and including the 30th day of December, 1929, the owner of more than ninety-five (95) per cent of the capital stock of the Roy Trading Company.

VII

That on March 15, 1930, the plaintiff, the Charles Ilfeld Company, with the consent of the Springer Trading Company and of the Roy Trading Company, filed a consolidated corporation income tax return, including therein a statement of the income received by itself, the Springer Trading Company and the Roy Trading Company for the calendar year of 1929.

VIII

That the plaintiff purchased all of the capital stock of the [fol. 15] Springer Trading Company in the year 1917 for the sum of $40,000.00.

IX

That the plaintiff purchased all of the capital stock of the Roy Trading Company in the year 1920 for the sum of $50,000.00.

X

That during the period from 1917 to 1929, inclusive, plaintiff advanced and loaned to the Springer Trading Company the sum of $69,030.27, no part of which has ever been repaid.

XI

That during the period from 1920 to 1929, inclusive, plaintiff advanced and loaned to the Roy Trading Company the sum of $9,782.22, no part of which has ever been repaid.

The foregoing request 1 to 11 inclusive refused.

Neblett, Judge.

To the failure of the Court to make the requested findings of fact 1-11 defendant objects and saves an exception.

Dudley Cornell, Assistant U. S. Attorney.

XII

That the plaintiff, Charles Ilfeld Company, for the taxable years 1918 to 1929, inclusive, filed consolidated corporation income tax returns, on which it claimed and received an allowance as deductions from its own net income the following sums as losses sustained by its subsidiaries:

Losses claimed on prior years consolidated returns:

Year	Springer Trading Co.	Roy Trading Co.
1918	2,953.20	
1920	34,979.15	
1921	32,559.68	13,157.09
1922	30,701.29	36,725.55
1923	3,794.38	2,716.22
1924	4,719.71	
1925	11,100.64	5,834.30
1926	3,552.31	
1927	4,491.22	574.09
1928	2,572.83	
1929		2,527.92
Total	131,424.41	61,535.17

[fol. 16] and on which it reported and was taxed upon the following sums as profits reported by its subsidiaries:

Profits reported as a part of the consolidated income were as follows:

Year		
1919	12,077.63	
1920		3,007.34
1924		421.33
1926		965.41
1928		12.84
1929	836.25	
	12,913.88	4,407,32

XIII

That the plaintiff has claimed and been allowed, in the aggregate, as deductions from its own net income, for the taxable years from 1918 to 1928, inclusive, the total sum of $131,434.41 and charged with and taxed upon profits in the total sum of $12,913.88, or allowed aggregate net deductions from its own taxable net income of $118,510.53 on account of operating losses sustained by the Springer Trading Company.

XIV

That the plaintiff has claimed and been allowed, in the aggregate, as deductions from its own net income for the taxable years from 1920 to 1929, inclusive, the total sum of $61,535.17 and charged with and taxed upon profits in the total sum of $4,407.32, or allowed aggregate net deductions from its own taxable income of $58,127.85 on account of operating losses sustained by the Roy Trading Company.

XV

That on the 22nd day of December, 1929, the Springer Trading Company distributed all of its assets, consisting of $22,914.22 in cash, to the plaintiff, which was the only distribution ever received by the plaintiff from the said Springer Trading Company.

XVI

That on the 23rd day of December, 1929, the Roy Trading Company distributed all of its assets, consisting of $15,106.16 in cash, to the plaintiff, from which was the only distribution ever received by the plaintiff from the said [fol. 17] Roy Trading Company.

XVII

That on the 30th day of December, 1929, the Springer Trading Company, by vote of its stockholders in meeting assembled, suspended corporate activities and thereafter and during the year 1929, cancelled its certificates of stock and surrendered its charter.

XVIII

That on the 30th day of December, 1929, the Roy Trading Company, by vote of its stockholders in meeting assembled, suspended corporate activities and thereafter and during the year 1929, cancelled its certificate of stock and surrendered its charter.

XIX

That plaintiff charged the sum of $86,116.05 off as a loss on its books at the close of the year 1929 as a result of its transactions with the Springer Trading Company during the years 1917 to 1929 inclusive.

XX

That plaintiff charged the sum of $44,676.06 off as a loss on its books at the close of the year 1929 as a result of its transactions with the Roy Trading Company during the years 1920 to 1929, inclusive.

XXI

That the plaintiff paid the defendant as Collector of Internal Revenue, the sum of $20,836.20, in equal quarterly installments, in the year 1930, as its income tax for the calendar year 1929.

XXII

That the plaintiff on May 22, 1931, filed a claim for the refund of $14,460.43 of the taxes paid by it for the year 1929, which claim for refund was disallowed by the Commissioner of Internal Revenue on January 28, 1932.

The foregoing requested findings 15 to 22 inclusive are refused.

Neblett, Judge.

To the refusal of the Court to make the requested find- [fol. 18] ings of fact 15 to 22 defendant objects and saves an exception.

Dudley Cornell, Asst. U. S. Atty.

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

I

That the calendar year 1929 was and constituted a "consolidated return period" for the plaintiff, the Springer Trading Company and the Roy Trading Company.

II

That the plaintiff and the Springer Trading Company were members of the same affiliated group of which the plaintiff was the parent, from the year 1917 to and including the 30th day of December, 1929, within the meaning of Section 141 (d) of the Revenue Act of 1928 (26 U. S. C. A. 2141.)

III

That the plaintiff, the Springer Trading Company and the Roy Trading Company were members of the same affiliated group of corporations, of which the plaintiff was the parent, from the year 1920 to and including December 30, 1929, within the meaning of Section 141 (d) of the Revenue Act of 1928 (26 U. S. C. A. 2141).

IV.

That the distribution by the Springer Trading Company and the Roy Trading Company of all their assets to the plaintiff on December 23, 1929, was a distribution during a "consolidated return period", by a member of an affiliated group or corporations to another member of such group, in cancellation or redemption of all or a portion of its stock and an intercompany transaction upon which Gain or Loss shall not be recognized within the meaning and intent of Article 37 (a) of Treasury Regulations 75, promulgated under the authority of Section 141 (b) of the Revenue Act of 1928 (26 U. S. C. A. 2141).

V

That the pleadings filed and the evidence introduced in this case are not sufficient to enable the Court to determine what portion of the sum of $69,030.27 advanced and loaned to the Springer Trading Company by the plain- [fol. 19] tiff during the period from 1917 to 1929, inclusive, was advanced and loaned during the "consolidated return period" of 1929 and what portion, if any, was advanced and loaned prior thereto.

VI

That the pleadings filed and the evidence introduced in this case are not sufficient to enable the Court to determine what portion of the sum of $9,782.22 advanced and loaned to the Roy Trading Company by the plaintiff during the period from 1920 to 1929, inclusive, was advanced and loaned during the "consolidated return period" of 1929 and what portion, if any, was advanced and loaned prior thereto.

VII

That in the absence of proof to the contrary, it is to be presumed that all of the sums advanced and loaned by the plaintiff to the Springer Trading Company and the Roy Trading Company were advanced and loaned during a "consolidated return period" constituted intercompany transactions and shall not be deducted as bad debts by the plaintiff during the taxable year 1929 by reason of Article 40 (a) of Treasury Regulations 75 promulgated under the authority of Section 141 (b) of the Revenue Act of 1928 (26 U. S. C. A. 2141).

VIII

That the plaintiff and the Springer Trading Company and the Roy Trading Company, by the filing of a consolidated return for the year 1929, consented to and are bound by all of the provisions of Treasury Regulations 75 promulgated under Sub-section (b) of Section 141 of the Revenue Act of 1928 (26 U. S. C. A. 2141).

IX.

That the plaintiff sustained no deductible loss by reason of the cancellation of the certificates of stock and the surrendering of the charter and the liquidation of its subsidiaries, the Springer Trading Company and the Roy Trading Company.

X

That the evidence introduced at the trial and the admis-[fol. 20] sions contained in the pleadings filed are insufficient to support a judgment in favor of the plaintiff.

XI

That the plaintiff is not entitled to recover judgment against the defendant in this action.

XII

That the defendant in this action is entitled to recover judgment against the plaintiff for his costs.

All the foregoing requested conclusions of law are refused.

Neblett, Judge.

To the refusal of the Court to make the above requested conclusions of law I to XII defendant objects and saves an exception.

Dudley Cornell, Asst. U. S. Atty.

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed August 19, 1932

The Court having read and considered the Requested Findings of Fact and Conclusions of Law submitted by the plaintiff and the defendant and being fully advised in the premises, doth make the following Findings of Fact and Conclusions of Law:

Finding of Fact No. 1

That the plaintiff Charles Ilfeld Company, a corporation, in the year 1917 purchased all of the capital stock of the Springer Trading Company, a corporation, and operated said Springer Trading Company, as an affiliated or subsidiary corporation from the year 1917 up to and including the month of November, 1929, as a going concern; and further, that in the year of 1920, the plaintiff purchased all of the capital stock of the Roy Trading Company, a New Mexico corporation, and operated the Roy Trading Company as an affiliated or subsidiary corporation from the year 1920 up to and including the month of November, 1929, as a going concern, and that during the years that said Springer Trading Company and Roy Trading Company were operated as affiliated or subsidiary corporations, [fol. 21] of the plaintiff as aforesaid, the plaintiff Charles Ilfeld Company filed affiliated returns as required by the laws of the United States and the Treasury Department and paid its income tax based on such returns, and availed itself of the annual operating losses of said subsidiaries during the said period of affiliation.

Finding of Fact No. 2

That the purchase price paid by the plaintiff for all of the stock of the Springer Trading Company in the year 1917 was the sum of forty thousand ($40,000.00) dollars; and that during the period extending from 1917 to 1929, the plaintiff advanced and loaned to the Springer Trading Company the sum of sixty-nine thousand thirty dollars and twenty-seven cents ($69,030.27); and that during the year 1929, up to and including the month of November, 1929, the Springer Trading Company liquidated and sold all of its assets to outside interests and paid all of its obligations; and that the affiliation between the plaintiff corporation and the said Springer Trading Company terminated in the month of November, 1929, at which time, said corporation suspended its business and ceased to function; and in the month of December, 1929, said Springer Trading Company turned over to the parent company the cash proceeds derived from liquidation, the said plaintiff realizing therefrom the sum of twenty-two thousand nine hundred fourteen dollars and twenty-two cents ($22,914.22), the sum being the only monies or thing of value ever paid over to the plaintiff parent corporation by said Springer Trading Company, at any time since the purchase by the plaintiff of all the stock of said Springer Trading Company, and further, that the plaintiff Charles Ilfeld Company sustained a loss on its capital investment in said Springer Trading Company during the period of affiliation, of the sum of eighty-six thousand one hundred sixteen dollars and five cents ($86,116.05) and that all of said loss was charged off the books of the plaintiff corporation as a loss at the close of the year 1929.

Finding of Fact No. 3

That the purchase price paid by the plaintiff for all of the stock of the Roy Trading Company in the year 1920 was the sum of fifty thousand ($50,000.00) dollars; and that during the period extending from 1920 to 1929, the [fol. 22] plaintiff advanced and loaned to the Roy Trading Company the sum of nine thousand seven hundred eighty-two dollars and twenty-two cents ($9,782.22); and that during the year 1929 and up to and including the month of November, 1929, the Roy Trading Company liquidated and sold all of its assets to outside interests and paid all of its obligations; and that the affiliation between the plaintiff parent corporation and said Roy Trading Company terminated in the month of November, 1929, at which time said corporation suspended its business and ceased to function; and in the month of December, 1929, said Roy Trading Company turned over to the parent company the cash proceeds derived from liquidation realizing therefrom the sum of fifteen thousand one hundred six dollars ($15,106.16), said sum being the only monies or thing of value ever paid over to the plaintiff parent corporation by said Roy Trading Company, at any time since the purchase by the plaintiff of all of the stock of said Roy Trading Company; and further, that the plaintiff Charles Ilfeld Company sustained a loss in the operation of said Roy Trading Company during the period of affiliation of the sum of forty-four thousand six hundred seventy-six dollars and six cents ($44,676.06), and that all of said loss was charged off the books of the plaintiff corporation as a loss at the close of the year 1929.

Finding of Fact No. 4

That both the Springer Trading Company and the Roy Trading Company were liquidated and dissolved in the month of November, 1929, and that thereafter, in the month of December, 1929, the cash realized from said liquidation and dissolution was paid over by said subsidiary corporations to the parent corporation.

Finding of Fact No. 5

That in the year of 1930 the plaintiff filed with the Collector of Internal Revenue its consolidated return, covering the plaintiff corporation's operations and the operations of the said subsidiary corporation, the Roy Trading Company and the Springer Trading Company without deducting the said losses sustained by it, the plaintiff, on the liquidation and dissolution of the said two subsidiary or affiliated companies, and paid to the defendant Collector of Internal Revenue the sum of twenty thousand eight hun- [fol. 23] dred thirty-six dollars and twenty cents ($20,836.20) in equal quarterly installments of five thousand two hundred nine dollars and five cents ($5,209.05) each, as follows:

March 15, 1930, the sum of	$5,209.05
June 15, 1930, the sum of	$5,209.05
Sept. 15, 1930, the sum of	$5,209.05
Dec. 15, 1930, the sum of	$5,209.05
Total	$20,836.20

as its tax for the said year; and thereafter, in the month of May, 1931, the plaintiff filed an amended return and claim for refund for the year 1929, with the Commissioner of Internal Revenue at Washington, D. C., setting up said losses sustained as aforesaid as deductible losses, which said claim for refund in the sum of fourteen thousand four hundred sixty dollars and forty-three cents ($14,460.43) was by the Commissioner of Internal Revenue of the United States, on the 28th day of January, 1932, disallowed.

Finding of Fact No. 6

That the plaintiff the Charles Ilfeld Company, for the taxable years 1918 to 1929 inclusive, filed consolidated corporation income tax returns, on which it claimed and received an allowance as deductions from its own net income the following sums as losses sustained by its subsidiaries: Losses claimed on prior years consolidated returns:

Year	Springer Trading Company	Roy Trading Company
1918	$2,953.20	$
1920	34,979.15	
1921	32,559.68	13,157.09
1922	30,701.29	36,725.55
1923	3,794.38	2,716.22
1924	4,719.71	
1925	11,100.64	5,834.30
1926	3,552.31	
1927	4,491.22	574.09
1928	2,572.83	
1929		2,527.92
Total	$131,424.41	$61,535.17

[fol. 24] and on which it reported and was taxed upon the following sums as profits realized by its subsidiaries:

Profits reported as a part of the consolidated income were as follows:

Year		
1919	$12,077.63	$
1920		3,007.74
1924		421.33
1926		965.41
1928		12.84
1929	836.25	
Total	$12,913.88	$4,407.32

Finding of Fact No. 7

That the plaintiff has claimed and been allowed, in the aggregate, as deductions from its own net income for the taxable years from 1918 to 1928, inclusive, the total sum of $131,424.41, and charged with and taxed upon profits in the total sum of $12,913.88, or allowed aggregate net deductions from its own taxable net income of $118,510.53 on account of operating losses sustained by the Springer Trading Company.

Finding of Fact No. 8

That the plaintiff has claimed and been allowed, in the aggregate, as deductions from its own net income for the taxable years from 1920 to 1929, inclusive, the total sum of $61,535.17, and charged with and taxed upon the profits in the total sum of $4,407.32, or allowed aggregate net deductions from its own taxable net income of $58,127.85 on account of operating losses sustained by the Roy Trading Company.

Finding of Fact No. 9

The Court finds the allegations of the plaintiff's complaint to be true and finds the issues generally in favor of the plaintiff; and further finds that the plaintiff is entitled to judgment against the defendant in the sum of fourteen thousand four hundred sixty dollars and forty-three cents ($14,460.43), together with interest as follows, to-wit:

6% interest on $3,615.10 from March 15, 1930;

6% interest on $3,615.11 from June 15, 1930;

[fol. 25] 6% interest on $3,615.11 from Sept. 15, 1930; and

6% interest on $3,615.11 from Dec. 15, 1930, until collected; and its costs in this behalf expended.

Conclusion of Law

From the foregoing Findings of Fact, the Court makes the following Conclusions of Law:

Conclusion of Law No. 1

That the liquidating dividends paid over by the subsidiary corporations the Springer Trading Company and the Roy Trading Company to the plaintiff in the month of December, were not paid over in cancellation or redemption of any part or portion of the stock of said corporations, nor was such payment in either instance an inter-company transaction.

Conclusion of Law No. 2

That the period of time from January first, 1929, up to and including the month of November, 1929, when the affiliations between the two subsidiary companies and the plaintiff parent corporation were broken by liquidation, constituted a consolidated return period; and the payment over of the liquidating dividends by said subsidiary companies in December, 1929, was not made during a consolidated return period.

Colin Neblett, Judge.

IN UNITED STATES DISTRICT COURT

JUDGMENT—Filed August 19, 1932

This cause came on regularly to be heard before the Court on the 5th day of August, 1932, each of the parties hereto having filed a formal written waiver of jury trial, and the Court having heard all of the evidence and the arguments of counsel and the Court having considered the requested Findings of Fact made by both the plaintiff and defendant and being fully advised in the premises

It is ordered, adjudged and decreed that the plaintiff do have and recover of the defendant the sum of fourteen thousand four hundred sixty dollars and forty-three cents ($14,460.43), together with interest as follows, to-wit:

6% interest on $3,615.11 from March 15, 1930;

6% interest on $3,615.11 from June 15, 1930;

[fol. 26] 6% interest on $3,615.11 from Sept. 15, 1930; and

6% interest on $3,615.11 from Dec. 15, 1930, until collected; and its costs in this behalf expended, to be taxed by the Clerk.

Colin Neblett, Judge.

IN UNITED STATES DISTRICT COURT

RULE OF COURT EXTENDING TIME WITHIN WHICH TO SETTLE BILL OF EXCEPTIONS

In the Matter of Rules of Court. No. 1426 Miscellaneous

It is ordered by the Court that the following rule be and it is hereby promulgated as an addition to Rule XXI entitled: "Appeal and Error".

"In appealed Law or Criminal cases, the Bill of Exceptions or Summary of the Evidence may be settled by the Court at any time prior to the date the transcript of the record on appeal must be filed and docketed with the Circuit Court of Appeals. Should the term of court at which the judgment was entered expire prior to said date, the term is hereby extended accordingly for said purposes without further order of court."

Santa Fe, New Mexico, this 1st day of October, 1930.

Colin Neblett, United States District Judge.

BILL OF EXCEPTIONS—Filed Dec. 21, 1932

Be it remembered that heretofore, to-wit: on the 5th day of August, 1932, the above entitled cause came on regularly for trial at Santa Fé, New Mexico, upon the issues joined herein, before the Honorable Colin Neblett, sitting as Judge of the above entitled court, without a jury, a jury having been duly waived by the parties by written stipulation, as follows, to-wit:

WAIVER OF JURY TRIAL

Now comes the plaintiff by its attorney, A. T. Hannett, Esquire, and files this, its written waiver of a trial by jury [fol. 27] and requests the Court to proceed to hear the issues and decide this cause without the intervention of a jury.

(Signed) A. T. Hannett, 509-11 Sunshine Bldg., Albuquerque, N. Mex., Attorney for the Plaintiff.

WAIVER OF TRIAL BY JURY

Now comes the defendant by his attorneys Hugh B. Woodward, Esquire, and Dudley Cornell, Esquire, and file this, his written Waiver of a Trial by Jury and request the Court to proceed to hear the issues and decide this cause without the intervention of a jury.

(Signed) Hugh B. Woodward, United States District Attorney. Dudley Cornell, Assistant U. S. District Attorney.

Thereupon the plaintiff introduced the following evidence:

The following Exhibit A (Internal Revenue Agent's report, dated October 10, 1931) was offered in evidence with the following statement:

Mr. Hannett: We have agreed that the audit of the books made by Mr. Warner Blair, who is auditor for the government, and which audit was the basis on which the government denied our claim, shall be received in evidence as to the facts and figures governing this suit. Is that right?

Mr. Harpole: It is agreed that the figures of the government agent's report are accurate and taken from the record.

Mr. Hannett: However, we do not agree that the final entry made by the Auditor where he charged this loss which we claim, to surplus. We claim that charge was incorrectly made, but should have been charged to Profit and Loss. Neither do we agree with his Conclusion of Law or citations of law, but as to capital investment, facts and figures, dissolution of the corporation and termination of affiliation that are set forth, are agreed to by all parties. We ask that this audit be marked Plaintiff's Exhibit A and offered in evidence with that statement.

The Court: It will be admitted.

[fol. 28] PLAINTIFF'S EXHIBIT A

Treasury Department, Internal Revenue Service

Office of Internal Revenue Agent in Charge

October 10, 1931.

In re Charles Ilfeld Company, Las Vegas, New Mexico.
Date of report: October 10, 1931. Years covered: 1929

SIRS: There is attached a statement of adjustments which this office proposes to recommend, affecting your income tax liability. If the adjustments suggested are satisfactory, and you do not desire to file a protest, the inclosed agreement form should be signed by you and forwarded to this office. Interest is payable on deficiencies found due as set forth on the attached Form 882.

If you do not agree with the conclusions set forth in the inclosed statement it is desired that every opportunity be afforded you to present to this office any objections or additional information. You are accordingly granted thirty days from date of this letter within which you may, if you so desire, protest the proposed adjustments. The protest and any additional statement of facts must be submitted to this office, executed in triplicate under oath, and should contain the following information:

(a) The name and adddess of the taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (b) in the case of a corporation the name of the State of incorporation;

(c) the designation by date and symbol of the letter advising of the proposed deficiency with respect to which the protest is made; (d) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (e) an itemized schedule of the findings to which the taxpayer takes exception; (f) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; (g) in case the taxpayer desires a hearing, a statement to that effect; and (h) in case the protest is prepared or filed by an attorney or agent it shall have thereon a statement signed by such attorney or agent showing whether or not he prepared it and whether or not the attorney or agent knows of his own knowledge that the facts therein are true.

[fol. 29] If a protest is filed it will be given careful consideration in this office before the recommendations are forwarded to Washington for action. In the event that you do not protest within the thirty-day period, the case will be forwarded immediately thereafter to the Bureau at Washington for review.

In the event the recommendations are not approved upon review in Washington, you will be notified and given opportunity to discuss the changes with this office, or should you fail to protest to this office, any protest which you may subsequently file with Washington will be referred to this office for consideration.

If a deficiency is indicated no remittance should be made until you receive notice of assessment from the Collector of Internal Revenue for your district.

Please acknowledge receipt by return mail, signing the next attached agreement form.

Respectfully, H. T. McCauley, Internal Revenue Agent in Charge.

Inclosures: Statement of adjustments; Forms 882 and 873.

File No. 5844. In re: Charles Ilfeld Company, Las Vegas, New Mexico. Place: Las Vegas, New Mexico. Date: August 2, 1931.

Examining Officer: Warner Blair. Time spent on examination: 12½ days.

—— ——, Internal Revenue Agent in Charge, Denver, Colorado.

An examination of the books and records of the above-named corporation for the year 1929, disclosed the following in connection with its income tax liability:

Summary

Year	Total tax liability	Deficiency in tax	Over-assessment	Penalties	District filed
1929	20,732.37		103.83		New Mexico

Net result: Overassessment 103.83.

Nature of business: Wholesale General Merchandise.

Authority for examination: Original 1929 return, Form 1120.

Comparison has been made with same.

[fol. 30] Affiliation: Yes. Waivers: None.

Claims: Filed May 22nd, 1931, in amount 14,460.43.

Correspondence from Bureau: None.

Warner Blair, Internal Revenue Agent.

Enclosures: Original 1929 return, Form 1120.
mtm.

PRELIMINARY STATEMENT

In re Charles Ilfeld Company, Las Vegas, New Mexico.

Date: August 21, 1931. Examining Officer: Warner Blair

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Schedule 1.—Net Income—Chas. Ilfeld Co.
Schedule 2.—Net Income—Roy Trading Co.
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Exhibit C.—Analysis Surplus—Chas. Ilfeld Co.
Exhibit D.—Reconciliation Consolidated Income.
Exhibit E.—Depreciation Schedules.
Exhibit F.—Balance Sheet—Roy Trading Co.
Exhibit G.—Analysis Surplus—Roy Trading Co.
Exhibit H.—Balance Sheet—Springer Trading Co.
Exhibit J.—Analysis Surplus—Springer Trading Co.

Summary

Year	Total tax liability	Deficiency in tax	Over-assessment	Penalties
1929	20,732.37		103.83	

Net overassessment: 102.82.

Principal causes of overassessment: Adjustment of loss and gain on sale of property by subsidiary companies.

Officers with whom findings were discussed, and conclusions:

Mr. Louis C. Ilfeld, Attorney and Director. Findings are not agreed to and protest will be made on basis of claim for loss on liquidation of subsidiaries.

Financial history of organization: Covered in prior revenue agent's reports. No changes in financial arrangement during current year except liquidation and dissolution of two subsidiaries, comment on which is fully covered hereinafter.

[fol. 31] Affiliation: The following companies have been determined to have been affiliated during 1929, in accordance with Section 141(d), Revenue Act of 1928:

Charles Ilfeld Co.—Las Vegas, N. Mex.—Parent.

Roy Trading Co.—Roy, N. Mex.—Subsidiary.

Springer Trading Co.—Springer, N. Mex.—Subsidiary.

Charles Ilfeld Company owned one hundred per cent of the capital stock of each of the two subsidiaries until they were liquidated and dissolved in November, 1929.

An affiliation return was filed for 1929, and Forms 1122 and 851 were properly filled out and filed with the return.

No basis for affiliation of any other companies was found to exist as the Charles Ilfeld Company did not own or control ninety-five per cent of the stock of any other company.

Claim for refund: Taxpayer has filed a claim for refund of income tax in amount of 14,460.43 for year 1929, claiming a deduction for losses sustained on the liquidation of the two subsidiaries during the year as follows:

Roy Trading Company	44,676.06
Springer Trading Company	86,116.05

The Springer Trading Company became affiliated in the latter part of 1917, and the Roy Trading Company in 1920. Affiliated returns have been filed for all years and the net losses of subsidiaries availed of by the parent company during the years of affiliation as finally corrected and adjusted per revenue agent's reports were as follows:

Year	Springer Trading Co.	Roy Trading Co.
1918	2,938.20	
1920	34,979.15	
1921	32,339.68	13,157.09
1922	30,701.29	36,725.55
1923	3,794.38	2,716.22
1924	4,719.71	
1925	11,100.64	5,834.30
1926	3,552.31	
1927	4,491.22	574.09
1928	2,572.83	
1929		2,527.92
Total	131,424.41	61,535.17

[fol. 32] Profits reported as a part of the consolidated income were as follows:

Year		
1919	12,077.63	
1920		3,007.74
1924		421.33
1926		965.41
1928		12.84
1929	836.25	
Total	12,913.88	4,407.32

The losses claimed were determined as follows:

Springer Trading Company:	
Stock Investment	40,000.00
Accounts Receivable	69,030.27
	109,030.27
Amount realized from liquidation	22,914.22
Loss claimed	86,116.05
Roy Trading Company:	
Stock Investment	50,000.00
Accounts Receivable	9,782.22
	59,782.22
Amount realized from liquidation	15,106.16
Loss claimed	44,676.06

Taxpayer contends that in accordange with Art. 34(c) (2) Reg. 75; U. S. Publishers Corp. v. Anderson, 42 Fed. (2d) 781; and G. C. M. 7765; the basis of the stock in the hands of the parent corporation cannot be adjusted account prior gains or prior losses of the subsidiaries, whether or not such gains or losses were availed of by the parent corporation in the consolidated return.

Reference to citations quoted refer to the sale of a subsidiary corporation's stock to outside interests and in the opinion of the examining officer they do not apply to the instant case.

In both of the instant cases the assets of the subsidiaries were sold to outside interests and the proceeds from the sales together with any remaining assets were taken over [fol. 33] and applied by the parent company against the investment and indebtedness of these subsidiaries and the subsidiaries were dissolved.

Under prior Revenue Acts and in accordance with the decision in the appeal of Riggs National Bank, 17 B. T. A. 615, the basis would have been reduced by the net losses availed of by the parent corporation in its consolidated returns as "it is not lightly to be assumed that congress intended that the same taxpayer should have the same deduction twice". Therefore, even on the old basis, it will be noted that the net losses availed of by the parent corporation are in excess of the basis in each instance and as a result no loss on liquidation would be allowable.

However, this is a 1929 transaction and by no stretch of the imagination can be considered other than a winding up dissolution and as per Article 37 (a), Reg. 75:

> "Gain or loss shall not be recognized upon a distribution during a consolidated return period, by a member of an affiliated group to another member of such group, in cancellation or redemption of all or any portion of its stock; and any such distribution shall be considered an intercompany transaction."

The facts established that the distribution and liquidation in question occurred during the consolidated period.

Article 40 (a) Regulations 75, also reads as follows:

> "Intercompany accounts receivable or other obligations which are the result of intercompany transactions during a

consolidated return period shall not be deducted as bad debts during a consolidated return period."

Therefore, in the opinion of the examining officer the claim should be denied as to losses on liquidation but allowed as to corrected operating profit and loss of the subsidiaries for current year as reflected in this report.

Schedule 1

Net Income

Net income as disclosed by return		188,753.66
As corrected		190,167.77
Net adjustment		1,414.11

[fol. 34]

Unallowable deductions and additional income:

(a) Excess depreciation	1,352.38	
(b) Adj. profit on sale assets	81.08	
Total		1,433.46

Non-taxable income and additional deductions:

(c) Interest paid	19.35	
Total		19.35
Net adjustment as above		1,414.11

Schedule 1-a

Explanation of Changes.

(a) Excess depreciation for year 1929 as per Exhibit E.

(b) Adjustment of profit and loss on sale of various assets as follows:

Auto at Santa Fe—Sale Price		500.00
Cost Price 1928	667.12	
Depreciation allowed 1928.	22.26	
		644.86
Loss sustained		144.86

No loss or gain per books account depreciation charged off on books	167.12		
Net decrease in Income			144.86
Furniture and Fixture Raton—Sale Price		125.00	
Cost Price Apl 1927	425.00		
Depreciation allowed	185.94	239.06	
Loss sustained	114.06		
Loss per books		100.00	
Net decrease in Income			14.06
Total decrease in Income			158.92

[fol. 35]

Autos—Raton—Sale Price		200.00	
Cost Price 1925	800.00		
Depreciation allowed	700.00	100.00	
Net gain		100.00	
Loss reported on books		140.00	
Net Increase in Income			240.00
Net adjustment			81.08

(c) Interest paid on a deficiency in income tax is an allowable deduction.

Total amount paid in November, 1929, as deficiency and interest for year 1927	214.88
Amount of deficiency in Tax	195.53
Balance representing interest paid	19.35

Roy Trading Company Year 1929

Schedule 2

Net Income

Net loss as disclosed by books	2,387.90
As corrected net loss	2,527.92
Net adjustment	140.02

Non-taxable income and additional deductions:

(a) Additional loss on sale assets	140.02	
Net adjustment as above		140.02

[fol. 36]

Schedule 2-a

Explanation of Changes

(a) Additional loss on sale of assets as follows:

Sale price		8,170.09
Cost price:		
Land	1,904.40	
Buildings 1919	15,301.24	
	17,205.64	
Depreciation allowed	7,959.13	
		9,246.51
Net loss		1,076.42
Loss reported on books		936.40
Additional loss		140.02

Springer Trading Company — Year 1929

Schedule 3

Net Income

Net income as disclosed by books		3,054.23
As corrected		836.25
Net adjustment		2,217.98

Non-taxable income and additional deductions:

(a) Adj. profit on sale assets	2,217.98	
Net adjustment as above		2,217.98

[fol. 37]

Schedule 3-a

Explanation of Changes

(a) Reduction in gain on sale of assets as follows:

Sale Price		22,500.00
Cost 1919—Land	600.00	
Buildings	44,659.85	
Imprv.	460.41	
Furn. & Fix	4,109.97	
	49,830.23	
Depreciation allowed	28,261.22	
		21,569.01
Net gain		930.99
Gain as shown on books		3,148.97
Net reduction		2,217.98

Charles Ilfeld Company Year 1929

Schedule 4

Consolidated Net Income 1929

Net income as corrected:	
Chas. Ilfeld Co. Schedule 1	190,167.77
Springer Trading Co. Schedule 3	836.25
	191,004.02
Net loss as corrected:	
Roy Trading Co. Schedule 2	2,527.92
Aggregate Net Income	188,476.10

Schedule 5

Computation of Tax

Income Tax

Net income for taxable year	188,476.10
Balance subject to tax	188,476.10

Income tax at 11%	20,732.37
Total tax assessable	20,732.37
Tax previously assessed	20,836.20
Overassessment	103.83

[fol. 38]

Charles Ilfeld Company, Year 1929

EXHIBIT A

Balance Sheet—December 31, 1928

Assets	Per Books	Debit	Credit	Amended
Cash	321,334.09	....	....	321,334.09
Notes Rec.	107,439.05	(a)78,812.49	....	186,251.54
Accts. Rec.	567,528.83	....	....	567,528.83
Inv. Mdse.	900,767.94	....	....	900,767.94
Inv. Hides, Wool, Pelts, etc.	17,075.50	....	....	17,075.50
Special Funds	2,850.00	....	....	2,850.00
Stocks—Other Companies	416,601.13	....	....	416,601.13
Stock — Springer Trading Company	1,950.39	(b)39,478.61	(c) 1,429.00	40,000.00
Stock—Roy Trading Co.	41,291.10	(b) 8,708.90	....	50,000.00
Bonds	1,250.00	(d) 340.00	....	1,590.00
Accts. Rec. Sub.	614,646.71	....	....	614,646.71
Notes Rec.—Stockholders	94,783.74	....	....	94,783.74
Land and Real Estate	16,052.68	....	....	16,052.68
Improvements	142,176.92	....	(e) 158.75	142,018.17
Furn. & Fix	41,297.78	....	(f) 12,168.61	29,129.17
Autos	13,138.59	....	(g) 1,138.45	12,000.14
Prepaid Expenses	4,362.31	....	....	4,362.31
Total Assets	3,304,546.76			3,416,991.95
Liabilities				
Deposits	52,195.07	....	....	52,195.07
Accts. Pay	92,688.84	....	....	92,688.84
Accrued Expense	21,988.72	....	....	21,988.72
Due to Subs	232,964.45	....	....	232,964.45
Chas. Ilfeld J. P. Acct	429,400.82	....	....	429,400.82
Deferred Profits	792.05	....	....	792.05
Res. for Depr.	137,640.83	(b)11,831.90	....	125,808.93
Capital Stock—Preferred	340,000.00	....	....	340,000.00
Capital Stock—Common	1,142,240.00	....	....	1,142,240.00
Surplus	854,635.98	(i)14,894.81	(i)139,171.90	978,913.07
Totals	3,304,546.76	154,066.71	154,066.71	3,416,991.95

[fol. 39]

Exhibit A-1

Explanation of Changes

(a) Notes of subsidiary companies charged off but disallowed as a deduction in prior years:

Springer Trading Co. 1921	50,000.00
Springer Trading Co. 1924	19,030.27
Roy Trading Co. 1924	9,782.22
	78,812.49

(b) Restoration of charge off account shrinkage in value of stock of Springer Trading Company and Roy Trading Company disallowed as a deduction in 1924.

(c) Elimination of appreciation in value of subsidiary stock as per adjustment prior years.

(d) Restoration of War Mother's Memorial bonds disallowed as a loss in 1927.

(e) Elimination of repair expense on Salome Building erroneously capitalized on books.

(f) Adjustment for Exhaustions occurring to 12/31/28 as follows:

Magdelena Furn. & Fix. 1927	1,263.47
Magdelena Furn. & Fix. 1928	137.65
Las Vegas Furn. & Fix. 1927	3,590.47
Las Vegas Furn. & Fix. 1928	7,124.52
	12,116.11
Additional credit for typewriter sold at Las Vegas 1928	57.25
	12,173.36
Less:	
Excess credit for desk returned L. V. 1928	4.75
Net adjustment	12,168.61

(g) Elimination of Magdalena Autos exhausted thru depreciation.

(h) Correcting reserve to amended figure per Exhibit E.

(i) Net adjustment to surplus:	Debit	Credit
Items (c), (e), (f) and (g)	14,894.81	
Items (a), (b), (d) and (b)		139,171.90

[fol. 40]

EXHIBIT B

Balance Sheet—December 31, 1929

Assets	Per Books	Debit	Credit	Amended
Cash	374,783.59			374,783.59
Notes Rec.	95,222.55			95,222.55
Accts. Rec.	541,300.01			541,300.01
Inv. Mdse.	735,069.03			735,069.03
Inv. Wool, Hides, Pelts, etc.	3,306.09			3,306.09
Special Funds	2,575.00			2,575.00
Stocks	429,163.93			429,163.93
Bonds	1,250.00	(a). 340.00		1,590.00
Accts. Rec. Sub. Cos.	420,296.14			420,296.14
Notes Rec.—Stockholders	209,319.08			209,319.98
Land & Real Estate	16,752.68			16,752.68
Improvements	157,670.01		(b) 158.75	157,511.26
Furn. & Fix.	26,973.92		(c) 682.91	26,291.01
Autos	11,008.13		(d) 1,138.45	9,869.68
Prepaid Exp.	11,908.07			11,908.07
Total Assets	3,036,598.23			3,034,958.12
Liabilities:				
Deposits	78,274.22			78,274.22
Accts. Pay	92,122.22			92,122.22
Accd. Taxes	22,290.23			22,290.23
Accd. Int	694.64			694.64
Chas. Ilfeld—J. O. Acct	211,520.88			211,520.88
Chas. Ilfeld—Pension Funds	6,228.18			6,228.18
Res. for Depr	136,308.84	(c) 3,432.25		132,876.59
Capital Stock—Preferred	340,000.00			340,000.00
Capital Stock—Common	1,222,700.00			1,222,700.00
Surplus	926,459.02	1,980.11	3,772.25	928,25[illegible].16
Total	3,036,598.23	5,752.36	5,752.36	3,034,958.12

[fol. 41]

EXHIBIT B-1

Explanation of Changes

(a) Same adjustment as item (d) Exhibit a.

(b) Adjustment as of December 31, 1928, per Item (e) Exhibit A.

(c) Adjustment to December 31, 1928, per Item (f) Exhibit A 12,168.61

Less:

Adjustments made on books during 1929 as follows:

Furn. & Fix. Exhaustions Magdalena		1,401.12	
Furn. & Fix. Exhaustions Las Vegas		10,714.99	12,116.11
			52.50
Adjustments for Exhaustions at Las Vegas:			
Exhaustions 1929		1,513.87	
Total credit on books in 1929	11,598.45		
Proportion applicable to exhaustions for years 1917 to 1919	10,714.99		
Balance applicable to 1920 exhaustions written-off 1929	883.46	883.46	
Excess 1929 exhaustions over books			630.41
Net adjustment			682.91

(d) Same as Item (g), Exhibit A.

[fol. 42] (e) Adjustment as of December 31, 1928, Item (h), Exhibit A			11,831.90
Excess depreciation 1929, Exhibit E			1,352.38
			13,184.28
Adj. Depr. on sale Raton F. & F.		14.06	
Adj. Depr. on sale S. F. Auto		144.86	158.92
			13,025.36
Adj. Depr. on Raton Auto			240.00
			13,265.36
Less:			
Adjustments made on books during year for following:			
Excess Depr. Albq. F. & F. 1924-25		411.68	
Excess Depr. Albq. F. & F. 1927		16.18	
Excess Depr. Mag. F. & F. 1927		85.30	
Excess Depr. Albq. Bldg. 1927		176.11	
Excess Depr. Mag. Bldg. 1927		27.72	

Excess Depr. L. V. F. & F. 1927	252.77	
Excess Depr. Raton F. & F. 1927	359.83	
Excess Depr. Raton F. & F. 1927	200.00	
Excess Depr. H. O. Brown House 1927	13.14	
Excess Depr. S. F. F. & F. 1927	1.00	
		1,543.73
		11,721.63
Add Depr. Mag. F. & F. 1924-25	180.22	
Add Depr. Albq. Bldg. 1924-25	1,054.10	
Add Depr. Mag. Bldg. 1924-25	304.90	
Add Depr. L. V. F. & F. 1924-25	1,350.14	
Add Depr. L. V. Impr. 1924-25	306.96	3,196.32
		14,917.95

[fol. 43] Explanation of Changes

Balance forward		14,917.95
Mag. F. & F. Exhaustion 1927-28	1,401.12	
L. V. F. & F. Exhaustion 1927-28-29	11,598.45	
		12,999.57
		1,918.38
Exhaustions 1929:		
L. V. F. & F.		1,513.87
Adjustment as of December 31, 1929, to correct to amended balance as per Exhibit E		3,432.25

[fol. 44] Exhibit C

Analysis of Surplus and Reconciliation of Amended Surplus with Amended Taxable Net Income.

Item	Per Books	Amended
Surplus beginning of period	854,635.98	978,913.07
Add:		
Income per books and corrected taxable net income	249,196.60	190,167.77
Nontaxable income for period:		

Item	Per Books		Amended	
Premium on Cap. Stock sold	50,374.78		50,374.78	
Dividends Rec.			66,320.00	
Other credits to surplus during period:				
Correction Erroneous charge 1928	60.00		60.00	
Excess depr. 1924-25	411.68			
Excess depr. 1927	1,132.05	301,175.11		306,922.55
		1,155,811.09		1,285,835.62
Deduct:				
Dividends (dates):				
2/19/29 Preferred 6%	20,400.00		20,400.00	
2/19/29 Common 15%	171,336.00		171,336.00	
Income taxes	28,517.55		28,517.55	
Income taxes deficiency for 1927	214.88		195.53	
Unallowable deductions:				
Premium paid on Cap. Stock purchased	5,687.32		5,687.32	
Donations			655.95	
Loss Springer Trading Company			86,116.05	
Loss Roy Trading Company			44,676.06	
Other charges to surplus during period:				
Additional Depr. R. A. R. 1924-25	3,196.32	229,352.07		357,584.46
Surplus end of period		926,459.02		928,251.16

[fol. 45]

EXHIBIT D

Reconciliation of Income per Books with Income per Return and with Taxable Net Income

Net Income per Books:		
Chas. Ilfeld Co.		249,196.60
Springer Trading Co.		3,054.23
Roy Trading Co.—Loss		—2,387.90
Total Net Income		249,862.93
Addition:		
Donation	655.95	
Loss on Liquidation Springer Trading Co.	7,736.88	8,392.83
		258,255.76

Deductions:		
Dividends Received	66,320.00	
Profit on Liquidation Roy Trading Company	2,515.77	
		68,835.77
Net income per return of taxpayer		189,419.99
Additions:		
(1) Excess depreciation	1,352.38	
(2) Adj. Profit on sale assets	81.08	1,433.46
		190,853.45
Deductions:		
(3) Increased loss Roy Trading Co.	140.02	
(4) Reduced Profit Springer Trading Co.	2,217.98	2,358.00
Taxable net income as per Schedule 5		188,495.45

(1) See Item (a) Schedule 1. (3) See Item (a) Schedule 2.
(2) See Item (b) Schedule 1. (4) See Item (a) Schedule 3.

[fol. 46]

Exhibit E

Depreciation Summary

Exhibit	Corrected Values as of 12/31/29	Total Value	Amended Reserve 12/31/28	Depreciation 1929
E-1	92,415.74	....	79,728.03	6,343.85
E-2	21,078.16	....	11,553.56	1,228.98
E-3	17,162.36	....	11,988.93	858.12
E-4	5,326.08	....	1,953.50	266.30
E-5	3,069.65	....	1,353.39	153.49
E-6	1,000.00	....	200.00	50.00
E-7	2,314.68	142,366.67	965.70	92.58
E-8	7,560.59	....	4,708.92	873.75
E-9	141.67	....	68.23	14.16
E-10	5,879.63	....	2,763.36	604.98
E-11	2,314.13	....	815.78	382.44
E-12	10,123.70	....	4,087.46	1,012.37
E-13	271.29	26,291.01	135.64	67.82
E-14	4,308.29	....	1,538.07	822.78
E-15	....	....	....	....
E-16	1,596.58	....	433.86	364.32
E-17	2,859.81	....	2,372.50	571.96
E-18	1,105.00	9,869.68	1,142.00	221.00
E-19	11,000.00	....	....	275.00
E-20	4,144.59	15,144.59	....	103.61
Total	....	....	125,808.93	14,307.51

[fol. 47]

Forward		125,808.93	14,307.51
Less:			
Debits to Reserve:			
For Exhaustions	5,617.21		
For Sales	1,622.64		7,329.85
			7,067.66
Amended Reserve		125,808.93	132,876.59
Total Depreciation Allowed			14,307.51
Total Depreciation Claimed			15,659.89
Increase or (Decrease)			—1,352.38

NOTE: Depreciation on Albuquerque Buildings, Exhibit E-1, computed on basis of life of lease running from January 1, 1911, to December 31, 1930, and on Magdalena Buildings, Exhibit E-2, on basis of life of lease running from October 1, 1916, to September 30, 1936.

EXHIBIT E-1

Depreciation Schedules

Year	Balance at Close of Period	Additions (Reductions)	Rate	Amended Reserve 12/31/28	Depreciation 1929
		Albuquerque Building			
1911-23	88,732.49	88,732.49	See note.		
1924	88,992.65	260.16			
1926	90,492.65	1,500.00			
1927	90,968.73	476.08			
1928	92,067.24	1,098.51			
1929	92,415.74	348.50		79,728.03	6,343.85
Depreciation Claimed					6,279.85
Increase or (Decrease)					64.00

EXHIBIT E-2

Magadalena Building

1917-23	21,068.56	21,068.56	See note.	11,553.56	1,228.98
Depreciation Claimed					1,186.71
Increase or (Decrease)					42.27

EXHIBIT E-3

Santa Rosa Building

1915-21	17,462.36	17,162.36	5%	11,988.93	858.12
Depreciation Claimed					858.12
Increase or (Decrease)					

[fol. 48]

EXHIBIT E-4

Salome Building—Magdalena

Year	Balance at close of period	Additions (reductions)	Rate	Amended reserve 12/31/28	Depreciation 1929
July 1921	4,976.08	4,976.08	5%	1,866.00	248.80
1924......	5,326.08	350.00		87.50	17.50
Total......				1,953.50	266.30
Depreciation Claimed......					266.30
Increase or (Decrease)......					

EXHIBIT E-5

Las Vegas Improvements

Year	Balance at close of period	Additions (reductions)	Rate	Amended reserve 12/31/28	Depreciation 1929
1918-20....	3,069.65	3,069.65	5%	1,353.39	153.49
Depreciation Claimed......					153.49
Increase or (Decrease)......					

EXHIBIT E-6

Auton Chico Dwelling

Year	Balance at close of period	Additions (reductions)	Rate	Amended reserve 12/31/28	Depreciation 1929
1925......	1,000.00	1,000.00	5%	200.00	50.00
Depreciation Claimed......					50.00
Increase or (Decrease)......					

EXHIBIT E-7

H. O. Brown ~~House~~—Las Vegas

Year	Balance at close of period	Additions (reductions)	Rate	Amended reserve 12/31/28	Depreciation 1929
May 1926	2,314.68	2,314.68	4%	965.76	92.58
Depreciation Claimed......					72.58
Increase or (Decrease)......					20.00

EXHIBIT E-8

Furniture and Fixtures—Albuquerque

Year	Balance at close of period	Additions (reductions)	Rate	Amended reserve 12/31/28	Depreciation 1929
July 1919	2,353.34	(a)2,353.34	10%	2,235.65	117.69
July 1920	2,601.76	248.42		211.14	24.84
July 1921	2,930.36	328.60		246.45	32.86
Jan. 1922	3,314.15	383.79		268.65	38.38
Jan. 1923	3,867.10	552.95		331.80	55.30
Jan. 1924	4,853.60	986.50		493.25	98.65
Jan. 1925	4,867.80	14.20		5.68	1.42
Jan. 1926	6,028.42	1,160.62		348.18	116.06
Jan. 1927	8,133.06	2,104.64		420.92	210.46
Jan. 1928	9,605.02	1,471.96		147.20	147.20
Jan. 1929	9,913.93	308.91		....	30.89
July 1929	7,560.59	(a)2,353.34—		....	30.89
Total......				4,708.92	873.75
Depreciation Claimed......					1,066.66
Increase or (Decrease)......					—192.91

(a) Exhausted.

[fol. 49]

Exhibit E-9

Furniture and Fixtures—Magdalena

Year	Balance at close of period	Additions (reductions)	Rate	Amended reserve 12/31/28	Depreciation 1929
July 1920	4.79	4.79	10%	3.78	.48
July 1921	37.85	33.06		24.81	3.30
Jan. 1924	83.77	45.92		22.95	4.59
Jan. 1925	88.23	4.46		1.78	.45
Jan. 1926	130.42	42.19		12.66	4.22
Jan. 1927	141.67	11.25		2.25	1.12
Total				68.23	14.16
Depreciation Claimed					7.90
Increase or (Decrease)					6.26

Exhibit E-10

Furniture and Fixtures—Las Vegas

Year	Balance at close of period	Additions (reductions)	Rate	Amended reserve 12/31/28	Depreciation 1929
Jan. 1920	1,036.50	(a)1,036.50	10%	1,036.50	....
Jan. 1921	1,343.46	(a) 306.96		306.96	....
Jan. 1922	1,513.87	(b) 170.41		153.39	17.02
Jan. 1923	1,536.07	22.20		13.32	2.22
Jan. 1924	2,171.47	635.40		317.69	63.54
Jan. 1925	2,261.94	90.47		36.20	9.05
Jan. 1926	3,552.20	1,290.26		387.09	129.03
Jan. 1927	5,858.85	2,306.65		461.33	230.66
Jan. 1928	6,367.66	508.81		50.88	50.88
Jan. 1929	7,393.50	1,025.84		....	102.58
Jan. 1929	6,050.04	(a)1,343.46—		....	....
Dec. 1929	5,879.63	(b) 170.41—		....	....
Total				2,763.36	604.98
Depreciation Claimed					1,438.03
Increase or (Decrease)					833.05

(a) and (b) Exhausted.

Exhibit E-11

Furniture and Fixtures—Raton

Year	Balance at close of period	Additions (reductions)	Rate	Amended reserve 12/31/28	Depreciation 1929
Apl. 1927	1,431.89	(a)1,431.89	25%	626.45	251.72
July 1927	2,604.22	1,172.33	10	175.84	117.23
Jan. 1928	2,739.13	134.91		13.49	13.49
Jan. 1929	2,314.13	(a) 425.00—		....	....
Total				815.78	382.44
Depreciation Claimed					297.39
Increase or (Decrease)					85.05

(a) Sold. Sale Price 125.00. Depreciation sustained 185.94; Loss 114.06.

[fol. 50]

Exhibit E-12

Year	Balance at close of period	Additions (reductions)	Rate	Amended Reserve 12/31/28	Depreciation 1929
	Furniture and Fixtures—Santa Fe				
Mar. 1920	1,916.10	1,916.10	40%	1,672.47	191.61
July 1921	3,381.96	1,465.86		1,099.43	146.59
Jan. 1922	3,646.93	264.97		185.50	26.50
Jan. 1923	3,658.93	12.00		7.20	1.20
Jan. 1924	3,815.07	156.14		62.45	15.61
Jan. 1925	3,896.49	81.42		32.56	8.14
Dec. 1925	3,914.69	18.20		5.46	1.82
Jan. 1926	4,430.32	515.63		154.68	51.56
Dec. 1926	5,789.06	1,358.74		271.75	135.87
Jan. 1927	7,533.39	1,744.33		348.86	174.43
Jan. 1928	10,004.40	2,471.01		247.10	247.10
Jan. 1929	10,123.70	119.30		....	11.94
Total				4,087.46	1,012.37
Depreciation Claimed					1,012.37
Increase or (Decrease)					

Exhibit E-13

Oil Equipment—Santa Fe

Year	Balance at close of period	Additions (reductions)	Rate	Amended Reserve 12/31/28	Depreciation 1929
Dec. 1926	139.70	139.70	25%	69.84	34.92
Jan. 1927	271.29	131.59		65.80	32.90
Total				135.64	67.82
Depreciation Claimed					67.82
Increase or (Decrease)					

Exhibit E-14

Automobiles—Albuquerque

Year	Balance at close of period	Additions (reductions)	Rate	Amended Reserve 12/31/28	Depreciation 1929
Dec. 1925	893.05	893.05	20%	714.26	.18
Dec. 1926	1,323.05	430.00	25%	215.00	107.50
Jan. 1927	2,584.00	1,260.95	20%	504.38	252.19
July 1928	3,382.94	798.94	20%	79.90	159.79
Nov. 1928	4,118.94	736.00	20%	24.53	147.20
Jan. 1929	4,393.94	275.00	20%	....	55.00
Jan. 1929	3,500.89 (a)	893.05—		....	....
July 1929	4,308.29	807.40	25%	....	100.92
Total				1,538.07	822.78
Depreciation Claimed					953.16
Increase or (Decrease)					—130.38

(a) Sold. Sale Price 200.00. Depreciation Sustained 714.44. Profit 21.39.

Exhibit E-15

Automobiles—Magdalena

None

[fol. 51]

Exhibit E-16

Automobiles—Santa Fe

Year	Balance at close of period	Additions (reductions)	Rate	Amended Reserve 12/31/28	Depreciation 1929
Aug. 1926	696.58	696.58	20%	336.60	139.32
Aug. 1928	1,596.58	900.00	25%	75.00	225.00
Nov. 1928	2,263.70	(a) 667.12		22.26	....
Jan. 1929	1,596.58	(a) —667.12		....	....
Total				433.86	364.32
Depreciation Claimed					364.32
Increase or (Decrease)					....

(a) Sold. Sale Price 500.00. Depreciation sustained 22.26. Loss 144.86.

Exhibit E-17

Automobiles—Las Vegas and Santa Rosa

Jan. 1917	1,750.00	(a) 1,750.00	10%	1,750.00	....
Jan. 1927	2,900.00	1,150.00	20%	460.00	230.00
Jan. 1928	3,712.50	812.50		162.50	162.50
Jan. 1929	1,962.50	(a) 1,750.00—		....	....
Jan. 1929	2,859.81	897.31		....	179.46
Total				2,372.50	571.96
Depreciation Claimed				....	571.96
Increase or (Decrease)					....

(a) Exhausted.

Exhibit E-18

Automobiles—Raton

Apl. 1927	800.00	(a) —800.00	50%	700.00	....
May 1927	1,905.00	1,105.00	20%	442.00	221.00
Nov. 1929	1,105.00	(a) —800.00		....	....
Total				1,142.00	221.00
Depreciation Claimed				....	221.00
Increase or (Decrease)				....	....

Exhibit E-19

Raton Building

July 1929	11,000.00	11,000.00	5%	....	275.00
Depreciation Claimed					550.00
Increase or (Decrease)					—275.00

Exhibit E-20

Wilson House—Las Vegas

July 1929	4,144.59	4,144.59	5%	....	103.61
Depreciation Claimed					242.23
Increase or (Decrease)					—138.62

[fol. 52]

Roy Trading Company, Year 1929

EXHIBIT F

Balance Sheet—December 31, 1928

Assets	Per books	Debit	Credit	Amended
Notes Rec.	895.92			895.92
Accts. Rec.	329.83			329.83
Merchandise	1,030.00			1,030.00
Chas. Ilfeld Co. Cash a/c	6,131.82			6,131.82
Real Estate	1,904.40			1,904.40
Improvements	15,301.24			15,301.24
Total Assets	25,593.21			25,593.21
Liabilities				
Bills Payable C. I. Co.			(b)9,782.22	9,782.22
Res. for Depr.	8,099.15	140.02		7,959.13
Capital Stock	50,000.00			50,000.00
Surplus	—32,505.94	(c)9,782.22	(c) 140.02	—42,148.14
	25,593.21	9,922.24	9,922.24	25,593.21

Explanation of Changes

(a) Correcting reserve to amended figure.

(b) Restoration of bills payable to Charles Ilfeld Company cancelled in 1924, but disallowed as a deduction to the parent corporation.

(c) Net adjustment to surplus items (a) and (b).

EXHIBIT G

Analysis of Surplus and Reconciliation of Amended Surplus with Amended Taxable Net Income

	Per books		Amended	
Surplus beginning of period		—32,505.94		—42,148.14
Add				
Income per books and with corrected taxable net income	—2,387.90		—2,527.92	
Other credits to surplus during period:				
Liquidated and Closed	34,893.84		44,676.06	
		32,505.94		42,148.14
Surplus end of period.				

[fol. 53]

Springer Trading Co., Year 1929

EXHIBIT H

Balance Sheet—December 31, 1928

Assets	Per books	Debit	Credit	Amended
Accounts Rec.— C. I. Co.				
Cash a/c	508.96			508.96
Buildings	44,659.85			44,639.85
Side Walks	212.52			212.52
Heating Plant	247.89			247.89
Land	600.00			600.00
Furn. & Fix.		(a) 4,109.97		4,109.97
Total Assets	46,229.22			50,339.19
Liabilities				
Bills Payable C. I. Co.			(c) 69,030.27	69,030.27
Res. for Depr.	26,369.23	(b)2,217.98	(a) 4,109.97	28,261.22
Capital Stock	40,000.00			40,000.00
Surplus	—20,140.01	(d)73,140.24	(d)6,327.95	—86,952.30
Totals	46,229.22	79,468.19	79,468.19	50,339.19

Explanation of Changes.

(a) Restoring furniture and fixtures which were charged off on books against depreciation reserve account fully exhausted but due to disallowance excess prior years not exhausted for income tax purposes.

(b) Correcting to amended figures.

(c) Restoration of bills payable to parent corporation account same disallowed as a charge off by parent company in 1924.

(d) Net adjustment to surplus of items (a) to (c) inclusive.

EXHIBIT D

Analysis of Surplus and Reconciliation of Amended Surplus with Amended Taxable Net Income

	Per books		Amended	
Surplus beginning of period		—20,140.01		—86,952.30
Add				
Income per books and corrected taxable net income	3,054.23		836.25	
Other credits to surplus during period:				
Liquidated and Closed	17,085.78		86,116.05	
		20,140.01		86,952.30
Surplus end of period				

[fol. 54]

Charles Ilfeld Company, Year 1929

Statement of Total Tax Liability

Year	Tax previously assessed	Adjustment proposed in accompanying report: Deficiency	Adjustment proposed in accompanying report: Overassessment	Correct tax liability
1929	20,836.20		103.83	20,732.37

Rodney B. Horton, called as a witness on behalf of the plaintiff, after being duly sworn, testified as follows:

Direct examination.

By Mr. Hannett:

I am a certified public accountant. I personally audited the books of the Charles Ilfeld Company for the purpose of making up an amended tax return for that company for the year 1929. I examined the books, and familiarized myself with all of the facts and figures necessary for making this report. I have seen the report of Mr. Warner Blair, received in evidence as Plaintiff's Exhibit A. The capital investment of the Charles Ilfeld Company in the Springer Trading Company was $40,000 made in the latter part of 1917.

By Mr. Hannett:

Q. I will change the question this way. Mr. Horton, if you know, when was each of these subsidiary companies, the Springer Trading Company and the Roy Trading Company, dissolved and the affiliation broken?
A. What was the date?

Mr. Harpole: Objected to as calling for a conclusion from the witness.
By the Court: Overruled.
Mr. Harpole: Exception.

Q. Yes.
A. November, 1929.

The business of the subsidiaries was wound up as of that date and all of their assets turned into cash during the year 1929. The final transaction of turning the assets of the two subsidiaries into cash occurred in November, 1929. The general ledger of the Charles Ilfeld Company discloses the final distribution of the cash of the subsidiaries [fol. 55] was made to the parent company on December 23, 1929. It became the property of the Charles Ilfeld Company on that date.

By Mr. Hannett:

Q. Can you state from the books that you have in your hands, and the other books of the Charles Ilfeld Company that you have examined, whether or not the payment, the liquidation of the two subsidiary companies, and the payment of this cash to the parent company had any relation to the cancellation of the stock of the corporation?

A. Yes, sir.

Mr. Harpole: Objected to.
By the Court: Overruled.

Q. Did it have any relation?
A. No, sir.
Q. There was no relation between the cancellation of the stock and the taking up of the stock of the corporation to the payment to the parent corporation of this liquidated dividend?

Mr. Harpole: Objected to as calling for a conclusion of the witness.
By the Court: Overruled.
Mr. Harpole: Exception.

A. None whatever.

There was charged off on the books of the Charles Ilfeld Company, as a loss, the original capital investment of these two subsidiaries and the loans made to these two companies. My findings and Mr. Blair's are exactly in accord as to the statistical data. It was charged off as of December 31, 1929, in his report and shows in his analysis surplus. The subsidiary companies never paid to the parent company any sum or anything in kind to apply on their investment or loans except the liquidated dividend. The amount of liquidated dividend paid by each corporation was, Springer Trading Company $22,914.22. This shows a loss of $86,116.05. The liquidated dividend paid by the Roy Trading Company was $15,106.16. The capital investment and loans was $59,782.22, showing a loss of $44,676.06.

[fol. 56] Cross-examination.

By Mr. Harpole:

It is my interpretation that the Springer Trading Company and the Roy Trading Company were dissolved in November, 1929. The entire assets were converted into cash as of that date. When a corporation converts into cash it certainly liquidates, in my mind. In this report Mr. Blair says it is dissolved and I take the same position. Charles Ilfeld Company owned 100 per cent of the stock of each subsidiary until they liquidated and dissolved in November, 1929. That is your agent's report. They went into a complete liquidated state on that date. Thew owned nothing except money. On December 23, or a month later, they paid this money over to the Charles Ilfeld Company. I do not know what happened to the stock of the subsidiary companies. We never could find it. So far as I know, it may be outstanding somewhere. The charter was surrendered December 30, 1929.

The minutes of the corporation, subsidiaries, show that "A special meeting of the stockholders of the Springer Trading Company was held at the office of the Charles Ilfeld Company at Las Vegas, New Mexico, the 30th day of December, 1929, pursuant to written waiver of this meeting signed by all stockholders. Present, Charles Ilfeld Company, by Louis C. Ilfeld, proxy, representing 397 shares; Herman C. Ilfeld, 1 share; Arthur C. Ilfeld, 1 share; Louis C. Ilfeld, 1 share. They being the holders of all of the issued capital stock of the corporation. The meeting was called to order by the President. The waiver of notice of the meeting, signed by all of the stockholders, was read and ordered filed. The President stated that the special business to come before the meeting was the consideration and ratification of the resolution passed by the Board of Directors at its meeting this day held, with reference to the filing in the office of the State Corporation Commission of New Mexico of a Certificate of Suspension of Business of the corporation. Upon motion duly made, seconded and unanimously carried, it was resolved that the action of the Board of Directors at its meeting this day held in preparing and filing in the office of the State Corporation Commission of New Mexico of a Certificate of Suspension of Business of the corporation be, and the same is hereby ratified and approved. There being no further business to transact, the meeting adjourned. Signed, Arthur C. Ilfeld, President, Herman C. Ilfeld, Secretary." [fol. 57] This is a receipt from the State Corporation Commission, "received of the Springer Trading Company by Louis C. Ilfeld $1, total $1", for the suspension of business. This receipt is dated January 2, 1930, on an elapse of time between the meeting and the time it reached Santa Fe. The date is December 30, which shows the dissolution. The same is true of the Roy Trading Company. Those minutes and the receipt are not the only things to show the dissolution of the subsidiary companies. The entries in the books show it. These entries refer to the final winding-up of their affairs. The Springer Trading Company final wind-up was December 23. The entry says "final settlement". I verified the items set out on page 4 of Plaintiff's Exhibit A. The items at the top are operating losses. They were deducted in the consolidated returns from the net income of the Charles Ilfeld Company for the various taxable years. Those deductions served to reduce the income tax liability of the Charles Ilfeld Company for the various years. During the years 1918 to 1929, Charles Ilfeld Company asked for and received deductions on its consolidated income tax returns because of operating losses sustained by the Springer Trading Company, its subsidiary, in the amount of $141,424.41, less $1,238.00 in gains. It asked for and was allowed in the years 1921 to 1929, inclusive, the amount of $61,535.17, less $4,407.32, as operating losses sustained by the Roy Trading Company, its subsidiary.

I first made an audit of the Charles Ilfeld Company books in 1930. I was employed to make an annual audit and prepare its income tax returns. I had not done that for prior years. I have an interest in the outcome of this action. That interest is a contingent fee.

Neither of the subsidiaries transacted any business whatever after the month of November, 1929. They were completed, wound up. From the standpoint of an auditor and from an accounting standpoint that is true.

[f. l. 58] Louis C. Ilfeld, called as a witness on behalf of the plaintiff, after first being duly sworn, testified as follows:

Direct examination.

By Mr. Hannett:

I was a director and I think I was assistant secretary of the Charles Ilfeld Company in 1929. I can't tell you exactly what became of the certificates of stock of the subsidiary corporations, the Roy Trading Company and the Springer Trading Company.

RECITAL AS TO DEFENDANT'S EXHIBITS

Thereupon the following exhibits were offered by the defendant and received in evidence without objection on the part of the plaintiff:

Defendant's Exhibit No. 1.—Original Parent Return. (Exhibit consists of certified copy, certificate omitted.)

Defendant's Exhibit No. 2.—Amended Parent Return. (Exhibit consists of certified copy, certificate omitted.)

Defendant's Exhibit No. 3.—Authorization and Consent of Subsidiary Corporation Included in a Consolidated Income Tax Return and Return of Information—Roy Trading Company. (Exhibit consists of certified copy, certificate omitted.)

Defendant's Exhibit No. 4.—Authorization and Consent of Subsidiary Corporation Included in a Consolidated Income Tax Return and Return of Information—Springer Trading Company. (Exhibit consists of certified copy, certificate omitted.)

The foregoing constitutes all of the evidence introduced by the plaintiff and defendant as material to and relating to the cause of action alleged in the complaint. Thereupon plaintiff rested his case and defendant made and filed a written motion for judgment as follows:

DEFENDANT'S MOTION FOR JUDGMENT

Comes now the defendant, B. C. Hernandez, through his attorneys, Hugh B. Woodward, United States Attorney for the District of New Mexico, Dudley Cornell, Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, and moves the Court for judgment in behalf of the defendant upon the ground and for the reason that the evidence in-

[fol. 59] troduced by the plaintiff is insufficient to support a judgment in his favor.

Dated — day of ——, 1932.

Hugh B. Woodward, U. S. Attorney, Dudley Cornell, Asst. U. S. Attorney, Eugene Harpole, Special Attorney, Bureau of Internal Revenue, Attorneys for Defendant.

Thereupon defendant rested its case. After hearing argument by counsel for the respective parties, the Court announced as follows:

By the Court: I think under the decisions cited by plaintiff, that the plaintiff is entitled to recover in this case. Judgment, therefore, will be for the plaintiff.

Mr. Harpole: Exception.

Thereafter on the 17th day of August, 1932, defendant prepared and presented to the Court, Special Findings of Fact and Conclusions of Law, together with the request for the adoption of the same, in words and figures as follows:

Request for Special Findings of Fact and Conclusions of Law omitted, printed side page 13, ante.

[fols. 60-65] Requested Findings of Fact and Conclusions of law omitted, printed side page 13, ante.

[fols. 66-71] Whereupon the Court accepted the proposed Findings of Fact and Conclusions of Law submitted by the plaintiff, and adopted, made and entered the same as its Findings of Fact and Conclusions of Law herein and rejected the Special Findings of Fact and Conclusions of Law submitted by the defendant with the exception of the defendant's requested Findings of Fact numbered XII, XIII and XIV, which the Court adopted, to which the defendant noted an exception, the said Findings of Fact and Conclusions of Law as adopted by the Court being in words and figures as follows:

Findings of Fact and Conclusions of Law omitted, printed side page 20, ante.

[fol. 72] STIPULATION AS TO BILL OF EXCEPTIONS

It is hereby stipulated and agreed by and between the attorneys for plaintiff and defendant that the foregoing Bill of Exceptions has been presented in time, that it contains all evidence given and proceedings had at the trial of this action material to the appeal of defendant and appellant; and that it may be approved, allowed and settled by the Judge in the above entitled court as correct in all respects; that the same shall be made a part of the record in said case and be the Bill of Exceptions therein; that said Bill of Exceptions may be used by either plaintiff or defendant upon any appeal taken by either plaintiff or defendant.

Dated this 19th day of December, A. D. 1932.

A. T. Hannett, Attorney for Plaintiff, Hugh B. Woodward, United States Attorney, Dudley Cornell, Assistant United States Attorney, Alva C. Baird, Special Attorney, Bureau of Internal Revenue; Eugene Harpole, Special Attorney, Bureau of Internal Revenue, Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

ORDER SETTLING BILL OF EXCEPTIONS

The foregoing Bill of Exceptions duly proposed, agreed upon by counsel for the respective parties, contains all evidence given and proceedings had in the trial of this action material to the appeal of defendant and appellant. It is correct in all respects and is hereby approved and allowed and settled and made a part of the record herein and said Bill of Exceptions may be used by the parties plaintiff and defendant on any appeal taken by either party plaintiff or defendant.

Dated this 21st day of December, A. D. 1932.

Colin Neblett, United States District Judge.

[fol. 73] Copy

DEFENDANT'S EXHIBIT No. 1

Corporation Income Tax Return for Calendar Year 1929

File This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1930.

Form 1120. Treasury Department, Internal Revenue Service.

(Auditor's Stamp.)

Closed. Overassessment. Tax: $103.83. Interest: —. Penalty: —. Serial No. 218,6052. Date of ar: 12/4/31. Adjusted by L. B. V. Div. AR. Sec. E. Unit 6. Date: 4/7/32. Recd. CC by —. Date: CCMN 4/11/32.

Print plainly corporation's name and business address: Charles Ilfeld Company, Las Vegas, New Mexico.

Date of Incorporation: 1906.

Under the Laws of what State or Country: New Mexico.

Page 1 of Return.

File Code, 92.

Serial Number: 43002.

(Cashier's Stamp:) Collector Internal Revenue. Paid March 18, 1930. District of New Mexico. Cash, Check (xx), M. O. Cert. of Ind.

First Payment: $5,209.05.

Carded As: New Mexico.

Kind of Business: Wholesale General Merchandise. Is This a Consolidated Return of Two or More Corporations? Yes.

Gross Income

Item and Instruction No.		
1. Gross Sales from Trading or Manufacturing, Less Returns and Allowances		$4,245,930.94
2. Less Cost of Goods Sold:		
(a) Inventory at beginning of year	$901,776.06	F
(b) Merchandise bought for sale	3,504,049.30	E
(c) Cost of manufacturing or producing goods (From Schedule A)		L D
(d) Total of lines (a), (b), and (c)	$4,405,825.36	
(e) Less inventory at end of year	735,069.03	3,670,756.33
3. Gross Profit from Trading or Manufacturing (Item 1 minus Item 2)		$575,174.61
4. Gross Profit from Operations Other Than Trading or Manufacturing.		

[fol. 74]

(State source of income):		
(a) COLLECTOR INTERNAL REVENUE		
(b) RECEIVED Mar. 15, 1930		
(c) District of New Mexico		
5. Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	68,618.40	
6. Rents	4,639.45	
7. Royalties		
8. Profit from Sale of Real Estate, Stocks, Bonds, and other Capital Assets (From Schedule B)	1,972.57	
9. Dividends on Stock of Domestic Corporations	66,320.00	

Item and Instruction No.		
10. Other Income (including dividends received on stock of foreign corporations). (State nature of income):		
(a)	66,449.73	
(b)		
(c)		
11. Total Income in Items 3 to 10		$783,174.76
Deductions		
12. Compensation of Officers (From Schedule C)	$46,600.00	
13. Rent on Business Property	11,350.03	
14. Repairs (From Schedule D)	4,323.24	
15. Interest	35,190.14	
16. Taxes (From Schedule E)	36,465.72	
17. Losses (From Schedule F)		
18. Bad Debts (From Schedule G)	42,425.29	
19. Dividends (From Schedule H)	66,320.00	
20. Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (From Schedule I)	15,659.89	
21. Depletion of Mines, Oil and Gas Wells, Timber, etc. (Submit schedule, see Instruction 21		
22. Other Deductions Not Reported Above. (Explain below, or on separate sheet):		
(a) Salaries and wages. (Not included in Item 2, 12, or 14 above)		
(b) Net Loss for prior year. (Submit schedule)		
(c)	335,400.46	
(d)		
(e)		
(f)		
23. Total Deductions in Items 12 to 22		$593,754.77
24. Net Income (Item 11 minus Item 23)		$189,419.99
Computation of Tax		
25. Net Income (Item 24 above)		$189,419.99
26. Less Credit of $3,000 (for a domestic corporation having a net income of less than $25,360)		
27. Balance (Item 25 minus Item 26)		$189,419.99
28. Income Tax (12% of Item 27)		$20,836.20
29. If net income of domestic corporation is less than $25,360, enter the amount over $25,000		
30. Total Tax (Item 28 plus Item 29)		$20,836.20
[fol. 75]		
31. Less: Income Tax Paid at Source. (This credit can only be allowed to a nonresident foreign corporation)		
32. Income Tax Paid to a Foreign Country or U. S. possession by a domestic corporation (see Inst. 27)		
33. Balance of Tax (Item 30 minus Items 31 and 32)		$20,836.20

An amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable at par.

SCHEDULE B

Charles Ilfeld Company and Affiliated Companies

Profit Sale of Capital Assets

Item	Cost	Prior Depreciation	Amount received		Gain Loss
Dodge Car	800.00	460.00	200.00	Loss	140.00
Motor	350.00	165.00	100.00	Loss	85.00
Burroughs Machine	75.00	35.00	25.00	Loss	15.00
Land, buildings, etc. of Roy Trading Co.	17,205.64	8,099.15	8,170.09	Loss	936.40
Land, buildings, etc. of Springer Trading Company	45,720.26	26,369.23	22,500.00	Gain	3,148.97
NET GAIN					1,972.57

Schedule 10 a

Other Income

Tie trading	108.18
Recoveries of accounts	12,157.34
Miscellaneous	143.77
Fire adjustment	1,964.67
Bean trading	1,375.67
Discount earned	49,864.04
Hides, pelts	237.47
Group insurance	252.20
Parcel post	346.39
	66,449.73

Schedule 22 c

Other Reductions

Hardware catalog	2,837.76
Discount	31,730.64
Attorney fees	288.73
Collection expense	640.96
Miscellaneous	159.02
[fol. 76] Groissant & Aldredge beans	169.28
Ernst & Ernst audit	2,640.71
Insurance, Schoonmaker—Springer	207.37
Advertising	2,615.65
Auto expense	3,104.03
Flood protection	300.00
Dues	1,990.96
General expense, audit, etc	4,919.85
Insurance, fire	9,101.34

Group insurance	1,527.68
Light, heat, water	2,970.57
Postage	4,821.08
Salaries	209,212.30
Stationery	3,657.63
Telegraph and tel.	4,561.37
Auditors traveling	597.60
Traveling	17,498.49
Sundries	10,044.84
Collection charges	215.35
Commissions paid, DG	10,201.46
Commissions paid-Groc	4,792.50
Commissions paid hardware	1,994.15
Office supplies	627.72
Store supplies	865.05
Drayage	1,106.37
	305,400.46

Schedule G

Bad Debts

1929

Watrous Merc	58.04
Atanecio Sena	559.58
A. Herrera	108.00
B. F. Romero	3.25
Las Vegas Poultry Association	42.49
G. Garcia	5.78
Jno. Leonard	45.00
Annie Lee	2.35
Grease Spot	89.92
G. C. Pagan	150.00
[fol. 77] B. Piacenza	16.08
J. B. Fernandez	61.93
Atchison-McCue	168.22
W. H. Ball	19.74
M. Biehl	91.46
Ralph Ciddio	11.65
County of San Miguel	250.00
Ike Davis	321.75
Mrs. A. Delgado	192.67
A. R. Gutierrez	624.44

T. M. de Herrera	103.28
Chester Hunker	47.90
L. V. Hardware & Furn. Co.	1.61
Lobby Pool Hall	5.64
Manuel E. Martinez	48.52
Luis Montano	358.00
Pastime Pool Hall	111.45
Elmer Pettine	37.72
Mike Pettine	280.88
Felipe Quitana	611.21
Chamber of Commerce	100.00
Sec. Romero	505.13
Mrs. H. Voght	62.32
C. W. Wildenstein	192.61
Chocolate Shop	406.05
W. G. Ogle	14.90
S. E. Allison	541.36
A. Baer & Co.	200.00
Coury Merc. Co.	28.47
M. Dorrance	77.33
R. Garcia y Sanchez	242.53
Gonzales and Son	144.64
F. Griego	59.22
E. C. Holderman	6.51
J. B. Jones	45.08
Justiano Leyba	16.93
Alex Ledoux	32.49
A. Lobato	385.74
Emma Longnecker	600.00
Jose Martinez	52.06
[fol. 78] James Martin	150.00
Edº Montoya	188.50
Candido Ortega	32.60
F. Padilla	1,000.00
Ribera Merc. Co.	30.74
C. J. Romero y Lopez	255.83
Victor Sena	3.59
W. P. Blake	358.51
Blue Parrot	365.73
F. L. Darlington	10.92
A. J. Heitzman	237.03
Lail Supply Co.	10.66
Nick Luciana	200.92

Abe Mickenay	150.00
F. C. Olmstead	604.08
B. F. Robinson	134.30
J. M. Starkey	5.00
Stern & Nahm	851.96
J. M. Simmons	3,000.00
Rev. E. Seull	356.54
Miners Trading Co.	325.00
J. H. Reynolds	1,400.00
F. Angel	325.63
Dan Booth	33.18
Jos. Danziger	1,250.00
L. L. Leal	19.07
R. D. Irwin	127.15
N. Luciana	93.56
J. O. Maddux	43.55
Lydia Meffort	150.00
Joe Mitchell	439.76
Pack Merc. Co.	200.00
Vic Padilla	8.82
R. O. Pittman	69.78
Bad check	1.00
Miners Trading Co.	250.00
L. Garcia	1,307.95
Luciana R. Baca	25.77
Bridge Street Market	44.50
[fol. 79] C. Collins	100.00
Fire Fighters	171.80
(Las Vegas Books)	22,476.36
Central Merc. Co.	20.80
Baca Bros.	10.00
San Jose Market	10.00
Breen Service	3.88
Jno. Seth.	7.50
Mrs. A. J. Salas	10.83
Regensberger Tire Co.	23.86
Sargent & Martin	14.67
Bond and Nohl	9.60
W. H. Olum	10.00
H. L. Craig	4.49
Gus Mitchell	2.25
Albuquerque Used Car	17.25

T. V. Allen	134.03
Central Grocery	927.57
Crescent Dairy	15.43
Do Nut Shop	139.30
Gasper Garcia	39.73
Hotel Monkbridge	18.47
E. F. Hulick	29.43
Ralph Houston	10.00
Wm. Kenworthy	69.61
Richard Lewis	480.68
McSpadden Grocery	2,173.51
National Guard	36.[illegible]3
L. Olivia	9.83
Panhandle Roofing Co.	12.00
Mrs. A. J. Salas	14.58
T. Errerez Mortuary	2.90
J. E. Withers, Jr.	73.08
Walker Allen	300.00
J. Herrera	465.55
Geo. Abousleman	194.81
A & P Garage	62.73
Frank Baca	483.10
Jake Barboa	158.06
[fol. 80] Brooklyn Cottage	1.22
Catron County	292.40
Central Merc. Co.	124.63
Co-operative Store	91.50
A. Eichwald Estate	763.10
R. L. Ferguson	5.57
A. Gallegos	87.83
Grants Merc. Co.	1,552.20
Tom Greer	56.30
E. E. Hamm	283.72
T. W. Herron	33.70
T. E. Holman	98.84
Hot Springs Laundry	97.96
King, Nilsen Co.	52.72
Fred Landwehr	243.56
O. L. Luna	45.70
Magdalena Market	312.91
Mehrens Chevrolet Co.	47.34
Jno. Nigro	4.50
No Name Grocery	63.78

Mrs. M. Roberts	77.11
San Marcial Merc.	929.65
San Ysidro Trading Co.	1,354.61
H. Smith	20.50
Ira Sweazea	1,225.27
E. W. Thomas	4.13
Gary Oil Co.	345.79
San Marcial Drug	30.13
Lujan & Chavez	55.21
B. M. Meyer	2,000.00
W. M. Smith	100.00
Meliton Torres	500.00
Andres C. DeBaca	43.53
Fred Balling	1,486.73
Martinez Bros.	52.95
Albert Livermore	103.33
McHorse and Rooney	71.42
N. F. Martinez	384.81
Elisio Ortega	13.60
J. D. Rael	34.95
[fol. 81] Ben Seiler	684.60
L. G. White	196.57
	19,969.93
Total Las Vegas Books	22,476.36
Total Albuquerque Books	19,969.93
Schedule G'	42,446.29

SCHEDULE I

Depreciation

Las Vegas, New Mexico

		1929	Prior
Santa Rosa Building:			
Indeterminate Lease cost plus additions 12/31/28	17,162.36	....	....
No additions 1929—5%		858.12	11,988.93
Raton Building:			
Cost 1929—5%	11,000.00	550.00	....
Salome Building:			
Cost plus additions 12/31/28	5,484.83	....	....
No additions 1929—5%		266.30	1,953.50
Salome Land	500.00	....	....
Wilson House:			
Cost 1929—5%	4,144.59	242.23	....
Wilson House, Land	700.00	....	....

		1929	Prior
Anton Chico House:			
Cost 12/31/28	1,000.00		
No additions 1929—5%		50.00	200.00
Anton Chico Land	144.75		
Brown House, 12/31/28	2,134.68		
No additions 1929—4%		72.58	965.70
Brown Land	800.00		
Real Estate	10,607.93		
E. Lucero Property:			
Cost 1929	4,000.00		
[fol. 82]			
Las Vegas Equipment 12/31/28	17,135.15		
Additions 1929	1,025.84		
	18,160.99		
Less exhausting after 1929 depreciation	11,598.45		
Rates, various	6,562.54	1,438.03	2,314.00
Raton Equipment 12/31/28	2,739.13		
Deductions 1929	425.00		
Rates, various	2,314.13	297.39	448.79
Las Vegas Improvements	3,069.65		
No additions 1929—5%		153.49	1,353.39
Autos, Las Vegas 12/31/28	3,712.50		
Deductions after 1929 depreciation	1,750.00		
	1,962.50	392.50	622.50
Auto, Santa Rosa:			
Cost 1929	897.31	179.46	
Auto, Raton:			
Cost 12/31/28	1,905.00		
Deductions 1929	800.00		
	1,105.00	221.00	442.00
Albuquerque Building:			
Lease 1/1/11 to 12/31/20	92,067.24		
Additions 1929	348.50		
	92,415.74		
Less prior amortization	79,811.04		
	12,604.70		
½ remaining (on 12,559.70)		6,279.85	79,811.04
[fol. 83]			
Magdalena Building:			
Lease 10/1916 to 9/30/36	21,078.16		
No 1929 additions			
Less prior amortization	11,584.35		
	9,493.81		
1/8 of remaining		1,186.71	11,584.35
Albuquerque Furniture and equipment 12/31/28	9,605.02		
Additions 1929	308.91		
	9,913.93		
Less exhaustions	2,353.34		
	7,560.59		
10%		756.06	
To adjust with revenue agent's report		310.60	2,424.19

		1929	Prior
Santa Fe Furn. & Fixtures:			
Cost plus additions 12/31/28	10,123.70		
No additions 1929—10%		1,012.37	4,034.36
Santa Fe Oil Equipment:			
Cost 12/31/28	271.29		
No additions 1929—25%		67.82	135.64
Autos, Santa Fe	1,396.58		
Cost 12/31/28			
No additions 1929		364.32	573.30
Autos, Albuquerque:			
Cost 12/31/28	4,118.94		
Additions 1929	189.35		
	4,308.29	953.16	952.77
Furniture and fixtures:			
Magdalena	2,681.24		
No additions 1929			
Exhaustions	1,401.12		
Depreciation	1,280.12	7.90	844.49

[fol. 84]

Recapitulation

Depreciation

	Cost	1929	Prior
Santa Rosa Building	17,162.36	858.12	11,988.93
Raton Building	11,000.00	550.00	
Salome Building	5,484.83	266.30	1,953.50
Salome Land	500.00		
Wilson House	4,144.59	242.23	
Wilson Land	700.00		
Anton Chico House	1,000.00	50.00	200.00
Anton Chico Land	144.75		
H. O. Brown House	2,314.68	72.58	965.70
Brown Land	800.00		
Real Estate	10,607.93		
F. Lucero Property	4,000.00		
Las Vegas, equipment	6,562.54	1,438.03	2,314.00
Raton equipment	2,314.13	297.39	448.79
Las Vegas improvements	3,069.65	153.49	1,353.39
Autos, Las Vegas	1,962.50	392.50	622.50
Autos, Santa Rosa	897.31	179.46	
Autos, Raton	1,105.00	221.00	442.00
Albuquerque building	92,415.74	6,279.85	79,811.04
Magdalena Building	21,078.16	1,186.71	11,584.35
Albuquerque Fur. & Fixt.	7,560.59	1,066.66	2,424.19
Santa Fe Furn. & Fixt.	10,123.70	1,012.37	4,034.36
Santa Fe Oil & Equipment	271.29	67.82	135.64
Santa Fe, autos	1,596.58	364.32	573.30
Albuquerque, autos	4,308.29	953.16	952.77
Magdalena Furn. & Fist.	1,280.12	7.90	844.49
	212,404.74	15,659.89	120,648.95

[fol. 85]

Operating Statement

1929

Item	Charles Ilfeld Company	Springer Trading Company	Roy Trading Company	Total
1. Gross sales	4,245,855.94	....	75.00	4,245,930.94
2. Cost of goods sold				
Inventory beginning of period	900,746.06	....	1,030.00	901,776.06
Purchases	3,504,049.30	....	....	3,504,049.30
Total	4,404,795.36	....	1,030.00	4,405,825.36
Inventory end of period	735,069.03	....	....	735,069.03
	3,669,726.33	....	1,030.00	35,670,756.33
3. Gross trading profit	576,129.61	....	Loss 955.00	575,174.61
5. Interest earned	68,618.40	....	....	68,618.40
6. Rents received	1,758.45	2,563.50	318.50	4,639.45
8. Profit sale capital assets	Loss 240.00	3,148.97	Loss 936.40	1,972.57
9. Dividends domestic corporations	66,320.00	....	....	66,320.00
10. Other income	65,869.61	150.00	430.12	66,449.73
11. Total income	778,456.07	5,861.47	Loss 1,142.78	783,174.76
12. Compensation officers	46,600.00	....	....	46,600.00
13. Rent paid	11,306.53	43.50	....	11,350.03
14. Repairs	2,593.74	1,473.35	256.15	4,323.24
15. Interest paid	35,190.14	....	....	35,190.14
16. Taxes	35,760.30	694.94	10.48	36,465.72
18. Bad debts	42,445.29	....	....	42,445.29
19. Dividends domestic corporations	66,320.00	....	....	66,320.00
20. Depreciation	15,659.89	....	....	15,659.89
22. Other deductions	333,826.52	595.45	978.49	335,400.46
23. Total	589,702.41	2,807.24	1,245.12	593,754.77
24. Net income	188,753.66	3,054.23	Loss 2,387.90	189,419.99

[fol. 86]

Chas. Ilfeld Co. and Affiliated Companies, Las Vegas, New Mexico, 1929

Balance Sheet 12/31/28

Assets	Charles Ilfeld Company	Roy Trading Company	Springer Trading Company	Eliminations	Total
CURRENT:					
Cash	321,334.09				321,334.09
Notes Receivable	107,439.05	895.92			108,334.97
Accounts receivable	567,528.83	329.83			567,858.66
Merchandise, Regular	900,767.94	1,030.00			901,797.94
Merchandise, other	17,075.50				17,075.50
Special funds	2,850.00				2,850.00
Total	1,916,995.41	2,255.75			1,919,251.16
PERMANENT ASSETS	212,665.97	17,205.64	45,720.26		275,591.87
DUE FROM SUBSIDIARIES	614,646.71	6,131.82	508.96	6,640.78	614,646.71
NOTES RECEIVABLE STOCKHOLDERS	94,783.74				94,783.74
BONDS	1,250.00				1,250.00
STOCK IN SUBSIDIARIES	459,842.62			43,241.49	416,601.13
OTHER ASSETS	4,362.31				4,362.31
	3,304,546.76	24,593.21	46,229.22	49,882.27	3,326,486.92
Liabilities					
CURRENT:					
Notes payable	52,195.07				52,195.07
Accounts payable	69,669.73				69,669.73
Accrued expense	21,194.79				21,194.79
Personal & sundry accounts payable	23,019.11				23,019.11
Accrued interest	793.93				793.93
Total	166,872.63				166,872.63
DEPRECIATION	137,640.83	8,099.15	26,369.23		172,109.21
DUE SUBSIDIARIES	232,964.45			6,640.78	226,323.67
DEFERRED INCOME	792.05				792.05
DUE CHARLES ILFELD JOINT OWNERSHIP	429,400.82				429,400.82
CAPITAL STOCK A	1,104,900.00	50,000.00	40,000.00	90,000.00	1,104,900.00
CAPITAL STOCK B	37,340.00				37,340.00
CAPITAL STOCK PREFERRED	340,000.00				340,000.00
SURPLUS EARNED	817,730.02	Deficit 32,505.94	Def. 20,140.01	Ded. 46,758.51	811,842.58
SURPLUS PAID IN	36,905.96				36,905.96
	3,304,546.76	25,593.21	46,229.22	49,882.27	3,326,486.92

[fol. 87] Balance Sheet, December 31, 1929

Assets:	
Current —	
Cash	374,783.59
Notes receivable	95,222.55
Accounts receivable	541,300.01
Merchandise Inventory	735,069.03
Special funds	2,575.00
Miscellaneous inventories	3,306.09
Total current	1,752,256.27
Permanent assets	212,404.74
Due from subsidiaries	420,296.14
Notes receivable, stockholders	209,319.08
Bonds	1,250.00
Stock in subsidiaries	429,163.93
Other sundry assets	11,908.07
	3,036,598.23
Liabilities:	
Current —	
Notes payable	69,042.76
Accounts payable	92,422.22
Accrued expense	22,290.23
Personal & sundry accounts payable	8,931.46
Accrued interest	694.64
Total current	193,381.31
Charles Ilfeld Pension Fund	6,228.18
Due Charles Ilfeld Joint ownership	211,520.88
Depreciation	136,308.84
Capital stock:	
Common A	1,185,600.00
Common B	37,100.00
Preferred	340,000.00
Surplus	926,459.02
	3,036,598.23

[fol. 88] Reconciliation of Net Income and Analysis of Surplus

	Charles Ilfeld Company		Roy Trading Company	Springer Trading Company	Total
Taxable income	188,753.66	Loss	2,387.90	3,054.23	189,419.99
Less Non deductible items:					
Donations	655.95				
Springer Trading Co. stock	7,736.88				
Total	8,392.83				8,392.83
Balance	180,360.83	Loss	2,387.90	3,054.23	181,027.16
Non-taxable income:					
Dividends	66,320.00				
Roy Trading Co. stock	2,515.77				
Total	68,835.77				68,835.77
Income per books	249,196.60	Loss	2,387.90	3,054.23	249,862.93
Surplus 12/31/28	854,635.98	Def.	32,505.94	Def. 20,140.01	801,990.03
Total	1,103,832.58	Def.	34,893.84	Def. 17,085.78	1,051,852.96
Additions to surplus:					
Income tax	60.00				
Revenue agents adjustments	1,543.73				
Premium stock sold	50,374.78				51,978.51
Roy Trading Co. and Springer Trading Co. liquidated and corporations suspended			34,893.84	17,085.78	51,979.62
Totals	1,155,811.09				1,155,811.09
Deductions:					
6% preferred dividend	20,400.00				
15% common dividend	171,336.00				
Premium stock purchased	5,687.32				
Federal income tax	28,517.55				
Revenue agents adj.	3,196.32				
Additions tax 1927	214.88				
Totals	229,352.07				229,352.07
Balance Surplus, 12/31/29	926,459.02				926,459.02

Affiliations Schedule

To be filed with each Consolidated Return for the taxable year 1929 and subsequent taxable years. (See Article 12 (c), Regulations 75.)

Taxable year ended December 31, 1929.

Parent corporation: Charles Ilfeld Company.

Address: Las Vegas, New Mexico.

The information required below must be submitted for all corporations in which at least 95 per centum of the stock is owned directly by the parent corporation, and in which an aggregate of at least 95 per centum of the stock is owned [fol. 89] directly by the parent corporation and/or one or more of the other corporations the income of which is included in the Consolidated Returns. See Section 141 of the Revenue Act of 1928, and Regulations 74 and 75.

Name of company, Parent company: 1. Charles Ilfeld Co.; Address, Las Vegas, N. Mex.; Date of Incorporation, 1906; State or Country in Which Incorporated, New Mexico; *Capital Stock Outstanding at Beginning of Year, Par Value, per share, —; total —; Stock Holdings at Beginning of Year, †Number of Shares —, Per Cent —; Owned by — — —.

Name of Company, Affiliated companies: 2. Roy Trading Company; Address, Roy, N. Nex.; Date of Incorporation, 1917; State or Country in Which Incorporated, New Mexico; *Capital Stock Outstanding at Beginning of Year, Par Value, per share, 100; total 50,000; Stock Holdings at Beginning of Year, †Number of Shares, 500; Per Cent, 100; Owned by, Co. No. 1.

Name of Company, Affiliated companies: 3. Springer Trading Co.; Address, Springer, N. Mex.; Date of Incorporation, 1917; State or Country in Which Incorporated, New Mexico; *Capital Stock Outstanding at Beginning of Year, per share, 100; total, 40,000; Stock Holdings at Beginning of Year, †Number of Shares, 400; Per Cent, 100; Owned by, Co. No. 1.

Changes in stock holdings during the year: None.

Remarks: Affiliated Companies Nos. 2 and 3 liquidated and corporations suspended December, 1929.

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*All classes of stock outstanding must be shown except nonvoting stock which is both limited and preferred as to dividends. If any corporation was not in existence at beginning of the year, show stock outstanding at date issued.

†It is not necessary to show stockholders of parent corporation.

We, the undersigned, president and treasurer of the parent corporation, being severally duly sworn, each for himself deposes and says that the above information and statements have been examined by him and are, to the best of his knowledge and belief, true and complete for the taxable year as stated.

Sworn to and subscribed before me this 10th day of March, 1930. (Signature of officer administering oath:) Kathryn M. Wolf, (Title:) Notary Public. My com. expires September 13, 1932. (Notarial Seal: Seal.)

[fol. 90] Max Nordhaus, President. Herman C. Ilfeld, Treasurer. (Corporate Seal: Seal.)

Schedule L—Reconciliation of Net Income and Analysis of Changes in Surplus

Items numbered 1 to 17, blank.

Page 3 of Return

Questions

Kind of Business

1. By means of the key letters given below, identify the corporation's main income-producing activity with one of the general classes, and follow this by a special description of the business sufficient to give the information called for under each general class.

A.—Agriculture and related industries, including fishing, logging, ice harvesting, etc., and also the leasing of such property: State the product or products. B.—Mining and quarrying, including gas and oil wells, and also the leasing of such property. State the product or products. C.—Manufacturing. State the product and also the material if not implied by the name of the product. D.—Construction—excavations, buildings, bridges, railroads, ships, etc., also equipping and installing same with systems, devices, or machinery, without their manufacture. State nature of structures built, materials used, or kind of installations. E1.—Transportation—rail, water, local, etc. State the kind and special product transported, if any. E2.—Public utilities—

gas (natural, coal, or water); electric light or power (hydro or steam generated); heating (steam or hot water); telephone; waterworks or power. E3.—Storage—without trading or profit from sales—(elevators, warehouses, stockyards, etc.). State product stored. E4.—Leasing transportation or utilities. State kind of property. F.—Trading in goods bought and not produced by the trading concern. State manner of trade, whether wholesale, retail, or commission, and product handled. Sales with storage with profit primarily from sales. G.—Service—domestic, including hotels, restaurants, etc.; amusements; other professional, personal, or technical service. State the service. H.—Finance, including banking, real estate, insurance. I.—Concerns not falling in above classes (a) because of combining several of them with no predominant business, or (b) for other reasons.

[fol. 91] 2. Concerns whose business involves activity falling in two or more of the above general classes, where the same product is concerned, should report business as identified with but one of the above general classes; for example, concerns in A or B which also transport and market their own product exclusively or mainly, should still be identified with classes A or B; concerns in C (manufacturing) which own or control their source of material supply in A or B and which also transport, sell, or install their own product exclusively or mainly, should be identified with manufacturing; concerns in D may control or own the source of supply of materials used exclusively or mainly in their constructive work; concerns in E1 or E2 may own or control the source of their material or power; concerns in F may transport or store their own merchandise, but its production would identify them with A, B, or C.

3. Answers:

(a) General class (use key letter designation), F. Wholesale.

(b) Main income-producing business (give specifically the information called for under each key letter, also whether acting as principal, or as agent on commission; state if inactive or in liquidation), Buying and selling merchandise as principal. Wholesale.

— Affiliations With Other Corporations

See Instruction 38

4. Is this a consolidated return of two or more corporations? ——. If so, procure from the Collector of Internal Revenue for your district Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return. See Article 12 (c) and (d), Regulations 75.

5. Did the corporation file a consolidated return for the preceding taxable year? Yes.

Predecessor Business

6. Did the corporation file a return under the same name for the preceding taxable year? Yes. Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? No. If answer is "yes" give name and address of each predecessor business, and the date of the change in entity. ——. Upon such [fol. 92] change were any asset values increased or decreased? ——. If the answer is "yes," closing balance sheets of old business and opening balance sheets of new business must be furnished.

Basis of Return

7. Is this return made on the basis of actual receipts and disbursements? No. If not, describe fully what other basis or method was used in computing net income. Accrual.

Valuation of Inventories

8. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock. Cost or market whichever lower.

List of Schedules Attached

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return.

Schedule 10a.—Other Income.
Schedule B.—Sale Capital Assets.
Schedule G.—Bad Debts.
Schedule I.—Depreciation.
Schedule 22c.—Other Deductions.
Operating Statement.
Balance Sheets, 12/31/28 and 12/31/29.
Analysis of Surplus Changes.
Form 851 Affiliations Schedule.

The corporation's books are in care of —— ——, located at Las Vegas, New Mexico.

Page 4 of Return.

Schedule A—Cost of Manufacturing or Producing Goods (See Instruction 2)

None.

Schedule B—Profit from Sale of Real Estate, Stocks, Bonds, etc. (See Instruction 8)

Schedule attached.

[fol. 93]

Schedule C—Compensation of Officers (See Instruction 12)

1. Name of officer	2. Official title	3. Time devoted to business	Shares of stock owned		6. Amount of compensation (Enter as Item 12)
			4. Common	5. Preferred	
Max Nordhaus	President	All	1825.8	85	$7,500
Arthur C. Ilfeld	Vice-Pres.	All	1561.6	85	7,500
Herman C. Ilfeld	Treasurer	All	830.8	85	7,500
Louis C. Ilfeld	Director-Attorney		1301.6	85	5,500
A. Stern	Director	All	750		7,500
E. L. Moulton	Director	All	750		7,500
J. P. Keogh	Secretary	All	50		3,600
					46,600

Schedule D—Cost of Repairs (See Instruction 14)

1. Items	2. Amount (Enter as Item 14)
Salaries and wages	—.
Minor repairs not materially affecting life of asset	$4323.24

Schedule E—Taxes Paid (See Instruction 16)

1. Items	2. Amount (Enter as Item 16)
County and State	$36,465.72

Schedule F—Explanation of Losses by Fire, Storm, etc. (See Instruction 17)

None.

Schedule G—Bad Debts (See Instruction 18)

None.

Schedule H—Dividends Deductible (See Instruction 19)

1. Name of corporation	Amount of Dividends 2. Domestic	3. Foreign
Corona Trading Company	$14,500	
Mountainair Trading Co.	15,060	
Leo Agrees, Inc.	8,400	
Gallup Merc. Co.	28,360	
	66,320	

Schedule I—Explanation of Deduction for Depreciation (See Instruction 20)

Schedule attached.

[fol. 94] Affidavit

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

Sworn to and subscribed before me this 10th day of March, 1930. (Signature of officer administering oath:) Kathryn M. Wolf, (Title:) Notary Public. My com. expires 9/13/32. (Notarial Seal: Seal.)

Max Nordhaus, President. Herman C. Ilfield, Treasurer. (Corporate Seal: Seal.)

Attach a separate sheet if any of the above schedules do not provide sufficient space.

DEFENDANT'S EXHIBIT NO. 2

Execute separate form for each tax period.

Treasury Department, Internal Revenue Service. Form 843—Jan. 1922. Comptroller General U. S. January 18, 1922

Important—File with Collector of Internal Revenue where assessment was made. Not acceptable unless completely filled in.

Claim for ( ) Abatement of Tax Assessed; ( ) Credit against Outstanding Assessments; (X) Refund of Taxes Illegally Collected; ( ) Refund of Amounts Paid for Stamps Used in Error or Excess.

Notice to Collector—Collector must indicate in block above the kind of claim, except in Income Tax cases.

Collector's Notation—Collector Internal Revenue, Received May 22, 1931, District New Mexico.

Received June 1, 1931, Claims Control Section.

State of New Mexico, County of San Miguel, ss.

2186052.

Type or Print.

(Name of taxpayer or purchaser of stamps:) Charles Ilfeld Company and Affiliated Companies.

[fol. 95] (Residence—give street and number as well as city or town and state:) ——.

(Business address:) Las Vegas, New Mexico.

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference to said statement are true and complete:

1. Business in which engaged: Wholesale merchants. (Period, Year) From: January 1, 1929, To: December 31, 1929.

2. Character of assessment or tax: Income tax (State for or upon what the tax was assessed or the stamps affixed).

3. Amount of assessment or stamps purchased: $20,836.20.

4. Reduction of Tax Liability Requested (Income and Profits Tax): $14,460.43.

5. Amount to be abated: $—.

6. Amount to be refunded (or such amount as is legally refundable): $14,460.43.

7. Dates of payment (See Collector's receipts of indorsements of canceled checks): Installments year 1930. (If

statement covers income tax liability, items 8-11, inclusive, must be answered.)

8. District in which return (if any) was filed: Albuquerque, New Mexico.

9. District in which unpaid assessment appears: None.

10. Amount of overpayment claimed as credit: None.

11. Unpaid assessment against which credit is asked: period from — to — $ None.

Deponent verily believes that this application should be allowed for the following reasons: This refund is predicated on amended return, attached hereto and made a part of this claim.

Statement of facts upon which claim is being made is as follows: (see sheets attached). (Attached additional sheets if necessary.)

Sworn to and subscribed before me this 21st day of May, 1931. Kathryn M. Wolf, (Title:) Notary Public. My Com. expires Sept. 13, 1932. (Seal.)

(Signed) Herman C. Ilfeld, Treasurer. Charles Ilfeld Company.

(This affidavit may be sworn to before a Deputy Collector of Internal Revenue or Revenue Agent without charge.)

[fol. 96] Certificates

I certify that an examination of the records of the Bureau of Internal Revenue shows the following facts as to the assessment and payment of the tax:

Schedule No. —

Name of taxpayer	Character of assessment and period covered	Year	Month	Page	Line	Assessed amount	Date paid	Amount paid
	1929	1930	Mch.	#43002	...	$20,836.20		
Charles Ilfeld Company, 1929 income Las Vegas, N. Mex.							3/15/30	5,209.05
							6/16/30	5,209.05
							9/16/30	5,209.05
							12/15/30	5,209.05
Total						$20,836.20		$20,836.20

B. C. Hernandez, Collector of Internal Revenue.

—— ——, Assessment Clerk, Commissioner's Office.

Claim No. —.

I certify that the record of my office show the following facts as to the purchase of stamps:

To whom sold or issued	Kind	Number	Denomination	Date of sale or issue	Amount	If special tax stamp, state: Serial number	If special tax stamp, state: Period commencing
		.....	.....	.....	.....	.....	.....

Collector: ——. District: ——. Claim No.: —. District: ——.

Schedule Number —. Allowed or Rejected Number —. (Nature of tax:) ——.

Claimant: ——. Address: ——.

Examined and submitted for action —— 19—.

——, ——, Committee on Claims.

Claim examined by ——.

Claim approved by ——, Chief of Division.

[fol. 97] Amount claimed: $—.

Amount allowed: $—.

Amount rejected: $—.

Schedule No. —.

Government Printing Office. c2—11704

(1) The Charles Ilfeld Company (the common parent corporation) owning more than 95 per centum of the stock of the Springer Trading Company and Roy Trading Company filed a consolidated return for the year 1929.

(2) During the year 1929 the Springer Trading Company and Roy Trading Company were completely liquidated. All assets belonging to these subsidiaries were sold to outside interests and the proceeds from the sale of these assets applied against the investment as carried by the parent corporation. Statements showing results of liquidations are attached to and made a part of amended return and the losses thus sustained shown on Lines 22-D and 22-E.

(3) The subsidiary companies suffered losses during the years prior to 1929 which were taken in consolidated returns but the losses sustained prior to 1929 have no effect upon the basis—Rec. 75, Art. 34 (c) (2) which reads as follows:

"From the sum of the aggregate bases, as determined in paragraph (1) above, there shall be deducted the aggregate of the losses of such issuing corporation sustained during each of the consolidated return periods (including only the taxable year 1929 and subsequent taxable years) after such corporation became a member of the group and prior to the sale of the stock, to the extent that such losses could not have been availed of by such corporation as a net loss in computing its tax for such periods if it had made a separate return for each of such periods."

(4) The above quoted regulations are invoked in this claim, and the following court decisions and General Counsel's memorandum 7765 amended are cited in support of the demand being made by this company for a refund of taxes with interest illegally collected:

U. S. District Court, Southern District of New York in United Publishers Corporation v. Anderson, 42 Fed. (2) 781, 8 Am. Fed. Tax Rep. 11229. Held. The loss was determined to be the difference between the cost of the stock and the selling price and the court was of the opinion that no [fol. 98] adjustment thereof was necessary on account of the fact that operating losses of the subsidiary had been deducted on consolidated returns filed for prior years.

Remington Rand, Inc., v. Commissioner, 33 Fed. (2d) 77, 7 Am. Fed. Tax Rep. 8785, Ct. D. 149, C. B. June 1930, p. 268.

General Counsel's Memorandum 7765 amended to read as follows:

"It is therefore the opinion of this office that upon the sale of a subsidiary corporation's stock to outside interests no adjustment to the gain or loss basis of such stock in the hands of the parent corporation is permissible on account of the prior gains of the subsidiary, whether such gains are reported in a consolidated return or in a separate return, or on account of the prior losses of the subsidiary whether such losses are reported in a consolidated return or in a separate return

—— ——, Collector Internal Revenue.

Received May 22, 1931. District New Mexico.

Amended Corporation Income Tax Return for Calendar Year 1929

File This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1930.

Form 1120. Treasury Department, Internal Revenue Service.

(Auditor's Stamp:) Overassessment. Tax $—. Interest: —. Penalty: —. Claim No. —. Date of ar. —. Adjusted by ——. Div. —. Sec. —. Unit —. Date ——. Recd. CC by ——. Date ——. See Original.

Print plainly corporation's name and business address. (Name:) Charles Ilfeld Company. (Street and number:) ——. (Post office and State:) Las Vegas, New Mexico.

Date of Incorporation, 1906.

Under the Laws of what State or Country, New Mexico.

Page 1 of Return.

File Code, 92.

(Cashier's Stamp:) Collector Internal Revenue. Re-[fol. 99] ceived May 22, 1931. District New Mexico. Cash, Check, M. O. Cert. of Ind.

First Payment $—.

Carded as ——.

Kind of Business, Wholesale Merchants. Is This a Consolidated Return of Two or More Corporations? ——.

Gross Income

Item and instruction No.		
1. Gross Sales from Trading or Manufacturing, Less Returns and Allowances		$4,245,855.94
2. Less Cost of Goods Sold:		
(a) Inventory at beginning of year	$900,746.06	
(b) Merchandise bought for sale	3,504,049.30	
(c) Cost of manufacturing or producing goods (From Schedule A)		
(d) Total of lines (a), (b), and (c)	$4,404,795.36	
(e) Less inventory at end of year	735,069.03	3,669,726.33
3. Gross Profit from Trading or Manufacturing (Item 1 minus Item 2)		$576,129.61
4. Gross Profit from Operations Other Than Trading or Manufacturing. (State Source of income):		
(a)		
(b)		
(c)		
5. Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds		68,618.40
6. Rents		1,758.45
7. Royalties		

Item and Instruction No.			
8.	Profit from sale of Real Estate, Stocks, Bonds, and other Capital Assets (From Schedule B)	(240.00)	
9.	Dividends on Stock of Domestic Corporations	66,320.00	
10.	Other Income (including dividends received on stock of foreign corporations). (State nature of income):	65,869.61	
	(a)		
	(b)		
	(c)		
11.	Total Income in Items 3 to 10		$778,456.07

[fol. 100]

Deductions

12.	Compensation of Officers (From Schedule C)	$46,600.00	
13.	Rent on Business Property	11,306.53	
14.	Repairs (From Schedule D)	2,593.74	
15.	Interest	35,190.14	
16.	Taxes (From Schedule E)	35,760.30	
17.	Losses (From Schedule F)		
18.	Bad Debts (From Schedule G) See Schedule "G"	42,445.29	
19.	Dividends (From Schedule H)	66,320.00	
20.	Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (From Schedule I)	15,659.89	
21.	Depletion of Mines, Oil and Gas Wells, Timber, etc. (Submit schedule, see Instruction 21)		
22.	Other Deductions Not Reported Above. (Explain below, or on separate sheet):		
	(a) Salaries and wages. (Not included in Item 2, 12, or 14 above)		
	(b) Net Loss for prior year. (Submit schedule)		
	(c) Ordinary and necessary expenses	333,826.52	
	(d) Loss—Springer Trading Company—Liquidation	86,116.05	
	(e) Loss—Roy Trading Company—Liquidation	44,676.06	
	(f)		
23.	Total Deductions in Items 12 to 22		$720,494.52
24.	Net Income (Item 11 minus Item 23)		$57,961.55

Computation of Tax

25.	Net Income (Item 24 above)	$57,961.55
26.	Less Credit of $3,000 (for a domestic corporation having a net income of less than $25,360)	
27.	Balance (Item 25 minus Item 26)	$57,961.55
28.	Income Tax (12% of Item 27)	6,375.77
29.	If net income of domestic corporations is less than $25,360, enter the amount over $25,000	
30.	Total Tax (Item 28 plus Item 29) Amended tax paid originally	6,375.77
31.	Less: Income Tax Paid at Source. (This credit can only be allowed to a nonresident foreign corporation)	20,836.20
32.	Income Tax Paid to a Foreign Country or U. S. possession by a domestic corporation (see Inst. 27)	
33.	Balance of Tax (Item 30 minus Items 31 and 32) Over Assessment	14,460.43

An amended return must be marked "Amended" at top of return. Checks and drafts will be accepted only if payable at par.

[fol. 101]

SCHEDULE K-1
Consolidated Balance Sheet
December 31, 1928
Charles Ilfeld Co. and Affiliated Companies, Las Vegas, New Mexico

Assets	Per books	Debit	Credit	Amended	Roy Trading Company	Springer Trading Company	Eliminations	Consolidated
Cash	321,334.09			321,334.09				321,334.09
Notes receivable	107,439.05	(a)78,812.49		186,251.54	895.92		78,812.49	108,334.97
Accounts receivable	567,528.83			567,528.83	329.83			567,858.66
Inventory—Mdse.	900,767.94			900,767.94	1,030.00			901,797.94
Inventory—Hides, wool and pelts	17,075.50			17,075.50				17,075.50
Special fund	2,850.00			2,850.00				2,850.00
Stocks—other companies	416,601.13			416,601.13				416,601.13
Stocks—Springer Company	1,950.39	(b)39,478.61	(c) 1,429.00	40,000.00			40,000.00	
Stocks—Roy Trading Company	41,291.10	(b) 8,708.90		50,000.00			50,000.00	
Bonds	1,250.00	(d) 340.00		1,590.00				1,590.00
Accounts receivable—Subsidiary companies	614,646.71			614,646.71				614,646.71
Notes receivable—stockholders	94,783.74			94,783.74				94,783.74
Land and real estate	16,052.68			16,052.68	1,904.40	600.00		18,557.08
Improvements	142,176.92		(e) 158.75	142,018.17	15,301.24	44,659.85		201,979.26
Furniture and fixtures	41,297.78		(f) 12,168.61	29,129.17		4,109.97		33,239.14
Autos	13,138.59		(g) 1,138.45	12,000.14				12,000.14
Prepaid expenses	4,362.31			4,362.31				4,362.31
Charles Ilfeld Company					6,131.82	508.96		6,640.78
Heating plant						247.89		247.89
Sidewalks						212.52		212.52
Totals	3,304,546.76			3,416,991.95	25,593.21	50,339.19	168,812.49	3,324,111.86

Consolidated Balance Sheet
December 31, 1928
Charles Ilfeld Co. and Affiliated Companies, Las Vegas, New Mexico

Liabilities	Per books	Debit	Credit	Amended	Roy Trading Company	Springer Trading Company	Elimi-nations	Con-solidated
Deposits	52,195.07			52,195.07				52,195.07
Accounts payable	92,688.84			92,688.84				92,688.84
Accrued expenses	21,988.72			21,988.72				21,988.72
Due to subsidiaries	232,964.45			232,964.45				232,964.45
Charles Ilfeld Joint Account	429,400.82			429,400.82				429,400.82
Deferred profits	792.05			792.05				792.05
Reserve for depreciation	137,640.83	(h)11,831.90		125,808.93	7,959.13	28,261.22		162,029.28
Capital stock—preferred	340,000.00			340,000.00				340,000.00
Capital stock—common	1,142,240.00			1,142,240.00	50,000.00	40,000.00	90,000.00	1,142,240.00
Surplus	854,635.98	(i)14,894.81	(i)139,171.90	978,913.07	(42,148.14)	(86,952.30)		849,812.63
Notes payable—Chas. Ilfeld Co.			T		9,782.22	69,030.27	78,812.49	
Totals	3,304,546.76	154,066.71	154,066.71	3,416,991.95	25,593.21	50,339.19	168,812.49	3,324,111.86

(a) Notes of subsidiary companies restored, charged off but disallowed as a deduction in prior years.
(b) Restoring shrinkage in stock of subsidiary companies disallowed in 1924.
(c) Eliminating appreciation stock of subsidiary company.
(d) Restoring War Mothers memorial bonds previously disallowed.
(e) Adjustment of Depreciation Reserve.
(f) Restoring Capital Assets to cost.
(g) Adjustment for exhaustion.
(h) Correcting Reserve for Depreciation.
(i) Adjustment to surplus.

NOTE: These adjustments are taken from Revenue Agent's report dated October 31, 1930, for the year 1928.

[fol. 102]

SCHEDULE K-2

Balance Sheet

December 31, 1929

Assets

Current:	
Cash	374,783.59
Notes receivable	95,222.55
Accounts receivable	541,300.01
Merchandise inventory	735,069.03
Special funds	2,575.00
Miscellaneous inventories	3,306.09
Total current	1,752,256.27
Permanent assets	212,404.74
Due from subsidiaries	420,296.14
Notes receivable, stockholders	209,319.08
Bonds	1,250.00
Stock in subsidiaries	429,163.93
Other sundry assets	11,908.07
Total Assets	3,036,598.23

Liabilities

Current:	
Notes payable	69,042.76
Accounts payable	92,422.22
Accrued expense	22,290.23
Personal and sundry accounts payable	8,931.46
Accrued interest	694.64
Total current liabilities	193,381.31
Charles Ilfeld pension fund	6,228.18
Due Charles Ilfeld Joint Ownership	211,520.88
Depreciation	136,308.84
Capital stock: Common "A"	1,185,600.00
Common "B"	37,100.00
Preferred	340,000.00
Surplus	926,459.02
Total Liabilities	3,036,598.23

[fol. 103] Loss from Sale of Capital Assets, Year Ended December 31, 1929

Assets	Cost	Depreciation taken	Amount received	(Loss) gain
Dodge Car	800.00	460.00	200.00	(140.00)
Motor	350.00	165.00	100.00	(85.00)
Burroughs machine	75.00	35.00	25.00	(15.00)
Totals	1,225.00	660.00	325.00	(240.00)

SCHEDULE G

Bad Debts

Las Vegas Books:	
Watrous Mercantile	58.04
Atanecio Sena	559.58
A. Herrera	108.00
B. F. Romero	3.25
Las Vegas Poultry Association	42.49
G. Garcia	5.78
Jno. Leonard	45.00
Annie Lee	2.35
Grease Spot	89.92
B. Piacenza	16.08
G. C. Pagan	150.00
J. B. Fernandez	61.93
Atchison-McCue	168.22
W. H. Ball	19.74
M. Biehl	91.46
Ralph Ciddio	11.65
County of San Miguel	250.00
Ike Davis	321.75
Mrs. A. Delgado	192.67
A. R. Gutierrez	624.44
T. M. DeHerrera	103.28
Chester Hunker	47.90
L. V. Hardware & Furniture Co.	1.61
Lobby Pool Hall	5.64
Manuel E. Martinez	48.52
Luis Montano	358.00
Pastime Pool Hall	111.45
Elmer Pettine	37.72
Mike Pettine	280.88

Felipe Quintana	611.21
[fol. 104] Chamber of Commerce	100.00
Sec. Romero	505.13
Mrs. H. Voght	62.32
C. W. Wildenstein	192.61
Chocolate Shop	406.05
W. G. Ogle	14.90
S. E. Allison	541.36
A. Baer & Company	200.00
Coury Mercantile Co.	28.47
M. Donrance	77.33
R. Garcia y Sanchez	242.53
Gonzales and Son	144.64
F. Griego	59.22
E. C. Holderman	6.51
J. B. Jones	45.08
Justiano Leyba	16.93
Alex Ledouz	32.49
A. Lobato	385.74
Emma Longnecker	600.00
Jose Martinez	52.06
James Martin	150.00
Ed Montoya	188.50
Candido Ortega	32.60
F. Padilla	1,000.00
Ribera Mercantile Co.	30.74
C. J. Romero y Lopez	255.83
Victor Sena	3.59
W. P. Blake	358.51
Blue Parrot	365.73
F. L. Darlington	10.92
A. J. Heitzman	237.03
Lail Supply Company	10.66
Nick Luciana	200.92
Abe Mickenay	150.00
F. C. Olmstead	604.08
B. F. Robinson	134.30
J. M. Starkey	5.00
Stern. & Nahm	851.96
J. M. Simmons	3,000.00
Rev. E. Scull	356.54
Miners Trading Company	325.00
J. H. Reynolds	1,400.00
[fol. 105] F. Angel	325.63

Dan Booth	33.18
Jos. Danziger	1,250.00
L. L. Leal	19.07
R. D. Irwin	127.15
N. Luciana	93.56
J. O. Maddux	43.55
Lydia Meffort	150.00
Joe Mitchell	439.76
Pack Mercantile Co.	200.00
Vic Padilla	8.82
R. O. Pittman	69.78
Bad check	1.00
Miners Trading Company	250.00
L. Garcia	1,307.95
Luciana R. Baca	25.77
Bridge Street market	44.50
C. Collins	100.00
Fire Fighters	171.80
Total	22,475.36

Albuquerque Books:

Central Merc. Co.	20.80
Baca Brothers	10.00
San Jose Market	10.00
Breen Service	3.88
John Seth	7.50
Mrs. A. J. Salas	10.83
Regensberger Tire Co.	23.86
Sargent & Martin	14.67
Bond and Nohl	9.60
W. H. Olum	10.00
H. L. Craig	4.49
Gus Mitchell	2.25
Albuquerque Used Car	17.25
T. V. Allen	134.03
Central Grocery	927.57
Crescent Dairy	15.43
Do Nut Shop	139.30
Gasper Garcia	39.73
Hotel Monksbridge	18.47
[fol. 106] E. F. Hulick	29.43

Ralph Houston	10.00
Wm. Kenworthy	69.61
Richard Lewis	480.68
McSpadden Grocery	2,173.51
National Guard	36.03
L. Olivia	9.83
Panhandle Roofing Company	12.00
Mrs. A. J. Salas	14.58
T. Errerez Mortuary	2.90
J. E. Withers, Jr.	73.08
Walker Allen	300.00
J. Herrera	465.55
Geo. Abousleman	194.81
A. & P. Garage	62.73
Frank Baca	483.10
Jake Barboa	158.06
Brooklyn Cottage	1.22
Catron County	292.40
Central Mercantile Co.	124.63
Co-operative Store	91.50
A. Eichwald Estate	763.10
R. L. Ferguson	5.57
A. Galleeos	87.83
Grants Merc. Company	1,552.20
Tom Greer	56.30
E. E. Hamm	283.72
T. W. Herron	33.70
T. E. Holman	98.84
Hot Springs Laundry	97.96
King, Nilson Company	52.72
Fred Landwehr	243.56
O. L. Luna	45.70
Magdalena Market	312.91
Mehrens Chevrolet Co.	47.34
John Nigro	4.50
No Name Grocery	63.78
Mrs. M. Roberts	77.11
San Marcial Merc.	929.65
San Ysidro Trading Co.	1,354.61
H. Smith	20.50
Ira Sweazea	1,225.27
[fol. 107] E. W. Thomas	4.13
Gary Oil Company	345.79
San Marcial Drug	30.13

Lujan & Chavez	55.21
B. M. Meyer	2,000.00
W. M. Smith	100.00
Meliton Torres	500.00
Andres C. DeBaca	43.53
Fred Balling	1,486.73
Martinez Bros.	52.95
Albert Livermore	103.33
McHorse & Rooney	71.42
N. F. Martinze	384.81
Elisio Ortega	13.60
J. D. Rael	34.95
Ben Seiler	684.60
L. G. White	196.57
Total	19,969.93

Summary:

Total Las Vegas Books	22,475.36
Total Albuquerque Books	19,969.93
	42,445.29

[fol. 108]

Depreciation Statement

December 31, 1929

Assets:	Cost	1929. Depreciation	Prior
Santa Rosa Building	17,162.36	858.12	11,988.93
Raton Building	11,000.00	550.00	
Salome Building	5,484.83	266.30	1,953.50
Salome Land	500.00		
Wilson House	4,144.59	242.23	
Wilson House Land	700.00		
Anton Chico House	1,000.00	50.00	200.00
Anton Chico Land	144.75		
N. P. Brown House	2,314.68	72.58	965.70
N. P. Brown Land	800.00		
Real Estate	10,607.93		
F. Lucero Property	4,000.00		
Las Vegas Equipment	6,562.54	1,438.03	2,314.00
Raton Equipment	2,314.13	297.39	448.79
Las Vegas Equipment	3,069.65	153.49	1,353.39
Autos—Las Vegas	1,962.50	392.50	622.50
Autos—Santa Rosa	897.31	179.46	
Autos—Raton	1,105.00	221.00	442.00
Albuquerque Bldg	92,415.74	6,279.85	79,811.04
Magdalena Building	21,078.16	1,186.71	11,584.35
Albuquerque Furn. & Equipment	7,560.59	1,066.66	2,424.19
Santa Fe Furniture & Fixtures	10,123.70	1,012.37	4,034.36
Santa Fe Oil Equipment	271.29	67.82	135.64
Santa Fe Autos	1,596.58	364.32	573.30
Albuquerque Autos	4,308.29	953.16	952.77
Magdalena Furn. & Fixt	1,280.12	7.90	844.49
Totals	212,404.74	15,659.89	120,648.95

[fol. 109]

SCHEDULE I

Line 22-C

Ordinary and Necessary Expenses, Year Ended December 31, 1929

Hardware catalogue	2,837.76
Discounts allowed	31,730.64
Attorney's fees	288.73
Collection expenses	640.96
Miscellaneous	159.02
Grossaint Aldredge Bean	169.28
Ernst & Ernst Audit	2,640.71
Insurance, Schronmaker, Springer	207.37
Advertising	2,615.65
Auto expense	3,104.03
Flood protection	300.00
Dues	1,990.96
General expenses (audit and traffic)	4,919.85
Insurance, fire	9,101.34
Group insurance	1,527.68
Light, heat and water	2,970.57
Postage	4,821.08
Salaries	209,212.30
Stationery	3,657.63
Telephone and telegraph	4,561.37
Auditors' traveling	597.60
Traveling	17,498.49
Sundries	10,044.84
Collection charges, Albuquerque	215.35
Commissions paid, Dry Goods selling	10,201.46
Commissions paid, Grocery selling	4,792.50
Commissions paid, Hardware selling	1,994.15
Office supplies	627.72
Store supplies	865.05
Drayage	1,106.37
	335,400.46

[fol. 110]

Less: previously reported		
Roy Trading Company	978.49	
Springer Trading Company	595.45	
		1,573.94
Net		333,826.52

Line 22-D

Disposition of Springer Trading Company's Stock & Note Period, January 1, 1929, to December 30, 1929

Investment		
Stock—Springer Trading Company	40,000.00	
Note—Springer Trading Company	69,030.27	
Total Investment Springer Trading Co.		109,030.27
Receipts From Liquidation		
Cash on hand January 1, 1929	508.96	
Rents received	2,562.50	
Arming and Powell	150.00	
Sale of land, buildings, etc.	22,500.00	
Total receipts	25,721.46	

Deduct

Liquidation Expenses

Rent	43.50		
Insurance	583.65		
Repairs	1,133.66		
Filing annual report	1.00		
Telegram	.30		
Freight	22.03		
Floersheim	27.89		
New Mexico Power Company	289.77		
L. C. Ilfeld expenses	10.50		
Taxes	694.94		
Total expenses		2,807.24	
Net receipts			22,914.22
Net Loss			86,116.05

[fol. 111]

Line 22-E

Disposition of Roy Trading Company's Stock & Note Period, January 1, 1929, to December 30, 1929

Investment

Stock—Roy Trading Company—at cost		50,000.00	
Note—Roy Trading Company—Cash		9,782.22	
Total investment Roy Trading Co			59,782.22

Receipts from Liquidation

Cash on hand January 1, 1929		6,131.82	
Collections		836.18	
Rents		318.50	
Sale of real estate and improvements		8,170.09	
Total receipts		15,456.59	

Deduct

Liquidation Expenses

Filing annual report	1.00		
Repair heating plant	183.85		
Repair rofing	68.05		
Repair coal bin	4.25		
Insurance	47.80		
Commission—Smith	35.00		
State & County taxes	10.48		
Total expenses		350.43	
Net receipts			15,106.16
Net loss			44,676.06

[fol. 112]

Line 10-A

Other Income

Year Ended December 31, 1929

Revenue		
Tie Trading		108.18
Recoveries of accounts		12,157.34
Miscellaneous		143.77
Fire adjustment		1,964.67
Bean trading		1,375.67
Discount earned		49,864.04
Hides—Pelts		237.47
Group insurance		252.20
Parcel post		346.39
		66,449.73
Less: previously reported		
Springer Trading Company	150.00	
Roy Trading Company	430.12	
		580.12
Total		65,869.61

Page 3 of Return

Schedule L—Reconciliation of Net Income and Analysis of Changes in Surplus

1. Net income from Item 24, page 1 of the return	$ 57,961.55
2. Nontaxable income:	
(a) Interest on obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia	
(b) Interest on securities issued under the Federal Farm Loan Act, or under such Act as amended	
(c) Interest on obligations of the United States or its possessions	
(d) Dividends deductible under Section 23 (p) of the Revenue Act of 1928	
(e) Proceeds of life insurance policies paid upon the death of the insured	
(f) Other items of nontaxable income (to be detailed):	

[fol. 113]

(1) Dividends	66,320.00
(2) Loss—Roy Trading Co.	44,676.06
(3) Loss—Springer Trading Co.	86,116.05
3. Charges against reserve for bad debts, if Item 18, page 1 of return, is not an addition to a reserve	
4. Charges against reserves for contingencies, etc., (to be detailed):	
(a) Roy Trading Company	
(b) previously reported in	
(c) error	2,515.77
5. Total of Lines 1 to 4, inclusive	$ 257,589.43
6. Total from Line 14	8,392.83
7. Net profit for year, as shown by books, before any adjustments are made therein (Line 5 minus Line 6)	$ 249,196.60
8. Surplus and undivided profits as shown by balance sheet at close of preceding taxable year	854,635.98
9. Other credits to surplus (to be detailed):	
(a) Income tax	60.00
(b) Depreciation—adjustment	1,543.73
(c) Premium on stock sold	50,374.78
10. Total of Lines 7 to 9, inclusive	$1,155,811.09

11.	Total from Line 17	229,352.07
12.	Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11)	$926,459.02
13.	Unallowable deductions:	
(a)	Donations, gratuities, and contributions	$ 655.95
(b)	Income and profits taxes paid to the United States, and so much of such taxes paid to its possessions or foreign countries as are claimed as a credit in Item 32, page 1 of the return	
(c)	Federal taxes paid on tax-free covenent bonds	
(d)	Special improvement taxes tending to increase the value of the property assessed	

[fol. 114]

(e)	Furniture and fixtures, additions, or betterments treated as expenses on the books	
(f)	Replacements and renewals	
(g)	Insurance premiums paid on the life of any officer or employee where the corporation is directly or indirectly a beneficiary	
(h)	Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest upon which is wholly exempt from taxation	
(i).	Additions to reserve for bad debts which are not included in Item 18, page 1 of return	
(j)	Additions to reserves for contingencies, etc. (to be detailed):	
(1)	Springer Trading Company	
(2)	previously reported in	
(3)	error	7,736.88
(k)	Other allowable deductions (to be detailed):	
(1)		
(2)		
(3)		
14.	Total of Line 13	$ 8,392.83
15.	Dividends paid during the taxable year (state whether paid in cash, stock of the corporation, or other property):	
(a)	Date paid, preferred, Character, Cash	$ 20,400.00
(b)	Date paid, common, Character, Cash	$ 171,336.00
(c)	Date paid, Adjustment, Character, revenue agent	3,196.32
(d)	Date paid Character	
16.	Other debits to surplus (to be detailed):	
(a)	Premium stock purchased	5,687.32
(b)	Income tax	28,517.55
(c)	Additional income tax—1927	214.88
17.	Total of Lines 15 and 16	$229,352.07

[fol. 115]

Questions

Kind of Business

1. By means of the key letters given below, identify the corporation's main income-producing activity with one of the general classes, and follow this by a special description of the business sufficient to give the information called for under each general class.

A.—Agriculture and related industries, including fishing, logging, ice harvesting, etc., and also the leasing of such property. State the product or products. B.—Mining and quarrying, including gas and oil wells, and also the leasing of such property. State the product or products. C.—Manufacturing. State the product and also the material if not implied by the name of the product. D.—Construction—excavations, buildings, bridges, railroads, ships, etc., also equipping and installing same with systems, devices, or machinery, without their manufacture. State nature of structures built, materials used, or kind of installations. E1.—Transportation—rail, water, local, etc. State the kind and special product transported, if any. E2.—Public utilities—gas (natural, coal, or water); electric light or power (hydro or steam generated); heating (steam or hot water); telephone; waterworks or power. E3.—Storage—without trading or profit from sales—(elevators, warehouses, stockyards, etc.). State product stored. E4.—Leasing transportation or utilities. State kind of property. F.—Trading in goods bought and not produced by the trading concern. State manner of trade, whether wholesale, retail, or commission, and product handled. Sales with storage with profit primarily from sales. G.—Service—domestic, including hotels, restaurants, etc.; amusements; other professional, personal, or technical service. State the service. H.—Finance, including banking, real estate, insurance. I.—Concerns not falling in above classes (a) because of combining several of them with no predominant business, or (b) for other reasons.

2. Concerns whose business involves activity falling in two or more of the above general classes, where the same product is concerned, should report business as identified with but one of the above general classes; for example, concerns in A or B which also transport and market their own product exclusively or mainly, should still be identified with classes A or B; concerns in C (manufacturing) which own [fol. 116] or control their source of material supply in A or B and which also transport, sell, or install their own product exclusively or mainly, should be identified with manufacturing; concerns in D may control or own the source of supply of materials used exclusively or mainly in their constructive work; concerns in E1 or E2 may own or control the source of their material or power; concerns in F may transport or store their own merchandise, but its production would identify them with A, B, or C.

3. Answers:

(a) General class (use key letter designation): ——.

(b) Main income-producing business (give specifically the information called for under each key letter, also whether acting as principal, or as agent on commission; state if inactive or in liquidation): ——.

Affiliations With Other Corporations, See Instruction 38

4. Is this a consolidated return of two or more corporations? ——. If so, procure from the Collector of Internal Revenue for your district Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return. See Article 12 (c) and (d), Regulations 75.

5. Did the corporation file a consolidated return for the preceding taxable year? ——.

Predecessor Business

6. Did the corporation file a return under the same name for the preceding taxable year? ——. Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? ——. If answer is "yes" give name and address of each predecessor business, and the date of the change in entity. —— Upon such change were any asset values increased or decreased? ——. If the answer is "yes," closing balance sheets of old business and opening balance sheets of new business must be furnished.

[fol. 117]

Basis of Return

7. Is this return made on the basis of actual receipts and disbursements? ——. If not, describe fully what other basis or method was used in computing net income.

Valuation of Inventories

8. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock. ——.

List of Attached Schedules

9. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return.

Schedule K-1.—Balance Sheet Dec. 31, 1928.

Schedule K-2.—Balance Sheet Dec. 31, 1929.

Schedule "B".—Sale of Capital Assets.

Schedule "G".—Bad Debts.

Schedule "I".—Depreciation.

Line 22-c.—Expenses.

Line 22-d.—Sale of Springer's stock.

Line 22-e.—Sale of Roy's stock.

Line 10-A.—Other income.

The corporation's books are in care of ——, located at ——.

Page 4 of Return.

Schedules A, B, C, D, E, F, G, H, and I (Blank).

Affidavit

We, the undersigned, vice-president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return made in [fol. 118] good faith, for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

Sworn to and subscribed before me this 25th day of May, 1931. (Signature of officer administering oath:) Kathryn M. Wolf, (Title:) Notary Public. My com. expires September 13, 1932. (Notarial Seal: Seal.)

Arthur C. Ilfeld, Vice-President. Herman C. Ilfeld, Treasurer. (Corporate Seal: Seal.)

Attach a separate sheet if any of the above schedules do not provide sufficient space.

DEFENDANT'S EXHIBIT NO. 3.

Authorization and Consent of Subsidiary Corporation Included in a Consolidated Income Tax Return and Return of Information for Calendar Year 1929

Or Fiscal Year begun —— —, 1928, and ended —— —, 1929.

Or for Period begun —— —, 1928, and ended —— —, 1929.

If return is for calendar year 1929, file it on or before March 15, 1930.

If the return is for a fiscal year, file it on or before the 15th day of the third month following the close of the fiscal year.

(Name of subsidiary:) Roy Trading Company.

(Street and number or rural route:) ——.

(Post Office and State:) Roy, New Mexico.

(Date received:) Collector Internal Revenue, Received March 28, 1930. District: New Mexico.

(1) Date incorporated: 1917. Under laws of what State: New Mexico.

(2) Kind of business: Retail General Merchandise.

(3) Name of parent corporation: Charles Ilfeld Company.

(4) Address of parent corporation: Las Vegas, New Mexico.

(5) Internal Revenue District in which consolidated return is filed (Give district, or city and State): Albuquerque, N. M.

The above-named subsidiary corporation hereby authorizes the above-named parent corporation (or in the event of its failure, the Commissioner or the Collector) to make a consolidated return on its behalf for the taxable year for which this form is filed, and for each taxable year there- [fol. 119] after that a consolidated return must be made under the provisions of Article 11 (a) of Regulations 75.

The above-named subsidiary corporation, in consideration of the privilege of joining in the making of a consolidated return with the above-named parent corporation, hereby consents to and agrees to be bound by the provisions of Regulations 75 prescribed prior to the making of this return. This consent is applicable to the taxable year for which this form is filed and to each taxable year thereafter that a consolidated return must be made under the provisions of Article 11 (a) of Regulations 75.

Affidavit

We, the undersigned, president and treasurer of the above-named subsidiary corporation, being severally duly sworn, each for himself deposes and says that the above-named subsidiary has authorized him to execute this form on its behalf, and that this form, including the accompanying list (if any), has been examined by him and the information contained herein is to the best of his knowledge and belief, a true and complete return of information made in good faith pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

Sworn to and subscribed before me this 26th day of March, 1930. (Signature of officer administering oath:) Kathryn M. Wolf, (Title:) Notary Public. My Com. expires September 13, 1932. (Notarial Seal: Seal.)

Louis C. Ilfeld, President. Arthur C. Ilfeld, Treasurer. (Corporate Seal: Seal.)

Instructions

Two duplicate originals of this form must be prepared and executed. Each must be executed under the corporate seal, and sworn to by the persons then qualified to swear to a separate return of such corporation. One of the duplicate original forms must be attached to the consolidated return as a partt hereof and filed by the parent corporation. The other must be filed in the office of the Collector for the district in which the subsidiary corporation has its principal place of business or principal office or agency, at or before the time the parent corporation files the consolidated return.

[fol. 120] DEFENDANT'S EXHIBIT NO. 4

Authorization and Consent of Subsidiary Corporation Included in a Consolidated Income Tax Return and Return of Information

For Calendar Year 1929

Or Fiscal Year begun —— —, 1928, and ended —— —, 1929.

Or for Period begun —— —, 1928, and ended —— —, 1929.

If return is for calendar year 1929, file it on or before March 15, 1930.

If the return is for a fiscal year, file it on or before the 15th day of the third month following the close of the fiscal year.

(Name of subsidiary:) Springer Trading Company.

(Street and number or rural route:) ——.

(Post Office and State:) Springer, New Mexico.

(Date received:) Collector Internal Revenue, Received March 28, 1930. District, New Mexico.

(1) Date incorporated, 1917. Under laws of what State, New Mexico.

(2) Kind of business, Retail General Merchandise.

(3) Name of parent corporation, Charles Ilfeld Company.

(4) Address of parent corporation, Las Vegas, New Mexico.

(5) Internal Revenue District in which consolidated return is filed (Give district, or city and State): Albuquerque, New Mexico.

The above-named subsidiary corporation hereby authorizes the above-named parent corporation (or in the event of its failure, the Commissioner or the Collector) to make a consolidated return on its behalf for the taxable year for which this form is filed, and for each taxable year thereafter that a consolidated return must be made under the provisions of Article 11 (a) of Regulations 75.

The above-named subsidiary corporation, in consideration of the privilege of joining in the making of a consolidated return with the above-named parent corporation, hereby consents to and agrees to be bound by the provisions of Regulations 75 prescribed prior to the making of this return. This consent is applicable to the taxable year for which this form is filed and to each taxable year thereafter [fol. 121] that a consolidated return must be made under the provisions of Article 11 (a) of Regulations 75.

Affidavit

We, the undersigned, president and treasurer of the above-named subsidiary corporation, being severally duly sworn, each for himself deposes and says that the above-named subsidiary has authorized him to execute this form on its behalf, and that this form, including the accompanying list (if any), has been examined by him and the information contained herein is, to the best of his knowledge and belief, a true and complete return of information made in good faith pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

Sworn to and subscribed before me this 26th day of March, 1930. (Signature of officer administering oath:) Kathryn M. Wolf, (Title:) Notary Public. My Com. expires September 13, 1932. (Notarial Seal; Seal.)

Arthur C. Ilfeld, President. Herman C. Ilfeld, Treasurer. (Corporate Seal; Seal.)

Instructions.

Two duplicate originals of this form must be prepared and executed. Each must be executed under the corporate seal, and sworn to by the persons then qualified to swear to a separate return of such corporation. One of the duplicate original forms must be attached to the consolidated return as a part thereof and filed by the parent corporation. The other must be filed in the office of the Collector for the district in which the subsidiary corporation has its principal place of business or principal office or agency, at or before the time the parent corporation files the consolidated return.

IN UNITED STATES DISTRICT COURT

MOTION TO AMEND DECREE—Filed October 8, 1932

Comes now the defendant by Hugh B. Woodward, United States Attorney, and Dudley Cornell, Assistant United States Attorney, and shows to the court that by decree made in this cause and dated the 19th day of August, 1932, it was decreed that the plaintiff should have and recover from the defendant interest at the rate of six (6) per cent upon the judgment, until paid.

Under the Act of June 30, 1932, Section 319, it is provided that the rate of interest to be allowed or paid shall be four (4) per cent per annum upon any judgment of what-

[fol. 122] soever character against the United States and or upon any overpayment in respect of any internal revenue tax.

Wherefore, defendant moves the court that the said decree may be corrected by providing for interest at the rate of four (4) per cent per annum upon said judgment.

Hugh B. Woodward, United States Attorney, by
Dudley Cornell, Assistant U. S. Attorney.

Duly sworn to by Dudley Cornell. Jurat omitted in printing.

In United States District Court

Amended Judgment—Filed October 19, 1932

This cause coming on regularly to be heard before the Court on the 19th day of October, A. D. 1932, upon the motion of defendant to amend the judgment and the defendant being represented by Hugh B. Woodward, United States Attorney, and Dudley Cornell, Assistant United States Attorney, for the District of New Mexico, and plaintiff being represented by its counsel, A. T. Hannett, and the plaintiff not resisting the said motion and the Court being fully advised in the premises,

It is ordered, adjudged and decreed that the judgment of this Court filed herein on the 19th day of August, A. D. 1932, be, and the same is hereby amended in the following respect:

That the provision for interest on said judgment at the rate of six per cent (6%) be, and the same is hereby [fol. 123] amended to read four per cent (4%) in each instance where interest is provided for in said judgment.

At Santa Fe, New Mexico, this 19th day of October, A. D. 1932.

Colin Neblett, United States District Judge.

In United States District Court

Petition for Appeal—Filed November 12, 1932

To the above entitled Court and to the Honorable Colin Neblett, Judge thereof:

Your petitioner, the defendant in the above-entitled case, feeling aggrieved by the judgment as entered herein in favor of said plaintiff, on August 19, 1932, prays that this appeal be allowed, and that citation be issued as provided by law and that a transcript of the record of the proceedings, and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Tenth Circuit, under the rules of such Court in such cases made and provided, and in connection with this petition, petitioner hereby presents Assignment of Errors, dated November 9, 1932.

Hugh B. Woodward, United States Attorney; Dudley Cornell, Assistant U. S. Attorney; Alva C. Baird, Special Attorney, Bureau of Internal Revenue; Eugene Harpole, Special Attorney, Bureau of Internal Revenue; Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed November 12, 1932

The defendant and appellant, above-named, makes and files the following Assignment of Errors, upon which he will rely for the prosecution of his appeal from the Judgment of this Court, entered therein on the 19th day of August, 1932:

[fol. 124] I

The Court erred in rendering judgment against the defendant and in favor of the plaintiff, in the sum of $14,460.43, together with interest thereon, in that

1. The evidence introduced herein is insufficient to support the Findings of Fact made by the Court.

2. The Findings of Fact made herein are insufficient to support the Conclusions of Law made by the Court.

3. The Conclusions of Law made by the Court herein are insufficient to support a judgment in favor of the plaintiff in said amount or in any other sum, or at all.

II

The Court erred in rendering judgment against the defendant in favor of the plaintiff for the reason that the pleadings and the evidence introduced disclosed that the plaintiff, Charles Ilfeld Company, a corporation, was affiliated with the Springer Trading Company, a corporation, at all times from the year 1917 to the 30th day of December, 1929, inclusive; that the plaintiff was affiliated with the Roy Trading Company from the year 1920 to and including the 30th day of December, 1929, inclusive; that on March 18, 1930, the plaintiff, the Springer Trading Company and the Roy Trading Company filed a consolidated income tax return for the calendar year 1929; that plaintiff had for the taxable years 1918 to 1929, inclusive, filed consolidated corporation income tax returns on which it claimed and received an allowance as deductions from its own net income of the following sums as losses sustained by its subsidiaries, the Springer Trading Company and the Roy Trading Company, respectively.

[fol. 125] Losses claimed on prior years consolidated returns:

Year	Trading Co.	Trading Co.
1918	$2,953.20	
1920	34,979.15	
1921	32,559.68	$13,157.09
1922	30,701.20	36,725.55
1923	3,794.38	2,716.22
1924	4,719.71	
1925	11,100.64	5,834.30
1926	3,552.31	
1927	4,491.22	574.09
1928	2,572.83	
1929		2,527.92
Total	$131,424.41	$61,535.17

and on which it reported and was taxed upon the following sums as profits realized by said Springer Trading Company and Roy Trading Company:

Profits reported as a part of the consolidated income were as follows:

Year		
1919	$12,077.63	
1920		$3,007.74
1924		421.33
1926		965.41
1928		12.84
1929	836.24	
Total	$12,913.88	$4,407.32

That on the 22nd day of December, 1929, the Springer Trading Company distributed all of its assets consisting of $22,914.22 in cash to the plaintiff; that on the 23rd day of December, 1929, the Roy Trading Company distributed all of its assets consisting of $15,106.00 in cash to the plaintiff; that on the 30th day of December, 1929, the Springer Trading Company and the Roy Trading Company by vote of their stockholders in meeting assembled, suspended corporate activities and thereafter during the year 1929 cancelled their certificates of stock and surrendered their corporate charters.

[fol. 126]

III

The Court erred in adopting its Findings of Fact numbered I, II and III, for the reasons that the pleadings and the evidence introduced herein do not support the said findings as made and entered by the Court herein, but on the contrary establish that affiliation between the plaintiff, Charles Ilfeld Company, the Springer Trading Company and the Roy Trading Company was not terminated during the month of November, 1929, but continued to and including the 30th day of December, 1929, within the meaning of Section 141(d) of the Revenue Act of 1928, 26 USCA 2141.

IV

The Court erred in adopting its Finding of Fact No. IV, made and entered herein, for the reason that the evidence introduced establishes that the Springer Trading Company and the Roy Trading Company were neither liquidated nor dissolved in the month of November, 1929, but on the contrary both continued in existence and undissolved until the 30th of December, 1929.

V

The Court erred in entering and adopting its Finding of Fact No. IX, made and entered herein on the ground that the pleadings and the evidence introduced herein do not support the said finding as made and entered by the Court.

VI

The Court erred in making and entering its Conclusion of Law No. 1, for the reason that the pleadings and the evidence introdu-ed at the trial, and the facts found by the Court fail to warrant or support said Conclusion, but, on the contrary, disclose that the liquidating dividends paid over to plaintiff by its subsidiary corporations, the Springer Trading Company and the Roy Trading Company, during the month of December, 1929, were paid over in cancellation or redemption of the capital stock of said corporations and constituted inter-company transactions within the meaning and intendment of Section 141 of the Revenue Act of 1926, USCA 2141 and Articles 31 (a) and 37 (a) of Treasury Regulations 75, promulgated under authority conferred by Section 141 (b) of the Revenue Act of 1928, USCA 2141.

[fol. 127]

VII

The Court erred in making and entering its Conclusion of Law No. II, for the reason that the pleadings on file, the evidence introduced at the trial of the case, and the Findings of Fact made by the Court fail to warrant or support said Conclusion, but, on the contrary, disclose that the entire calendar year 1929 and not the period of time from January 21, 1929, up to and including the month of November, 1929, constituted a consolidated return period within the meaning of Section 141 of the Revenue Act of 1928, 26 USCA 2141, and Article 2 (c), Treasury Regulations 74; and that the affiliation between the two subsidiary companies and the plaintiff terminated on the 30th day of December, 1929, and not during the month of November, 1929, within the meaning and intendment of Section 141 (d) of the Revenue Act of 1928, 26 USCA 2141. And further, that the payment to plaintiff of the liquidating dividends by its subsidiary companies in the month of December, 1929, was made during a consolidated return period.

VIII

The Court erred in refusing to adopt the Findings of Fact presented by the defendant herein as set forth in the defendant's proposed Findings of Fact and Conclusions of Law filed herein, more specifically by refusing to adopt the following paragraphs of defendant's proposed Findings of Fact and Conclusions of Law herein:

(a) Defendant's proposed Finding of Fact No. I.

(b) Defendant's proposed Finding of Fact No. III.

(c) Defendant's proposed Finding of Fact No. IV.

(d) Defendant's proposed Finding of Fact No. V.

(e) Defendant's proposed Finding of Fact No. VI.

(f) Defendant's proposed Finding of Fact No. VII.

(g) Defendant's proposed Finding of Fact No. XV.

(h) Defendant's proposed Finding of Fact No. XVI.

(i) Defendant's proposed Finding of Fact No. XVII.

(j) Defendant's proposed Finding of Fact No. XVIII.

(k) Defendant's proposed Finding of Fact No. XIX.

[fol. 128] (l) Defendant's proposed Finding of Fact No. XX.

(m) Defendant's proposed Finding of Fact No. XXI.

(n) Defendant's proposed Finding of Fact No. XXII.

on the ground and for the reason that the pleadings on file and the evidence introduced in this cause established the facts so requested by the defendant herein.

IX

The Court erred in refusing to adopt Conclusions of Law Nos. I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XII proposed by the defendant herein on the ground and for the reason that the pleadings filed, the evidence introduced herein and the findings of fact proposed by the defendant herein supported and warranted the Conclusions of Law requested by the defendant herein.

X

The Court erred in denying defendant's motion for the adoption of the Special Findings of Fact and the Conclusions of Law proposed by the defendant herein on the ground and for the reason that said Findings of Fact and Conclusions of Law so proposed by the defendant were supported by the pleadings and the evidence introduced herein.

XI

The Court erred in not granting defendant's motion for judgment made at the conclusion of the trial of the said case for the reason that the evidence introduced was not sufficient to warrant or support a judgment in favor of the plaintiff.

XII

The Court erred in entering its judgment herein in favor of the plaitniff in that said judgment is not supported by the evidence herein or by the preponderance thereof. It is not supported by the Findings of Fact and the Conclusions [fol. 129] of Law proposed by the defendant herein. That said judgment entered herein is contrary to law.

Dated this 9th day of November, 1932.

Hugh B. Woodward, United States Attorney; Dudley Cornell, Assistant U. S. Attorney; Alva C. Baird, Special Attorney, Bureau of Internal Revenue; Eugene Harpole, Special Attorney, Bureau of Internal Revenue, Attorneys for Defendant.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed November 19, 1932

In the above entitled action, the defendant having filed his petition for an order allowing him to appeal from the judgment entered in the above entitled action on August 19, 1932;

It is ordered, that said appeal, from said judgment, to the United States Circuit Court of Appeals for the Tenth Circuit, be and the same is hereby allowed to the defendant, and that a certified transcript of the record, bill of exceptions, exhibits, stipulations and pleadings and all proceedings herein be transmitted to said United States Circuit Court of Appeals.

Dated this 14th day of November, 1932.

Orie L. Phillips, United States Circuit Judge.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT ON APPEAL—Filed December 3, 1932

To Wm. D. Bryars, Clerk of the United States District Court for the District of New Mexico:

You are hereby requested to make a Transcript of Record to be filed in the United States Circuit Court of

Appeals for the Tenth Circuit, pursuant to an appeal [fol. 130] allowed in the above-entitled cause, and to include in said Transcript of Record, the following papers:

1. Citation on Appeal.
2. Complaint.
3. Answer.
4. Stipulation Waiving Jury.
5. Defendant's Motion for Judgment.
6. Defendant's Request for Findings of Fact and Conclusions of Law with Proposed Special Findings of Fact and Conclusions of Law attached.
7. Findings of Fact and Conclusions of Law.
8. Judgment.
9. Orders Extending Time for Settling Bill of Exceptions.
10. Bill of Exceptions.
11. Petition for Appeal.
12. Order allowing Appeal.
13. Assignment of Errors on Appeal.
14. Motion for Amending Judgment.
15. Order Amending Judgment.
16. Clerk's Certificate and this Præcipe. Dated this 26th day of November, 1932.

Hugh B. Woodward, United States Attorney, Dudley Cornell, Assistant U. S. Attorney, Alva C. Baird, Special Attorney, Bureau of Internal Revenue; Eugene Harpole, Special Attorney, Bureau of Internal Revenue; Attorneys for Defendant.

[fols. 131 & 132] Acknowledgment of service of the foregoing præcipe made this 1st day of December, 1932.

A. T. Hannett, Attorney for Plaintiff.

(Citation in proper form, directed to appellee, was issued on Nov. 14, 1932, and on Nov. 17, 1932, service of said citation was accepted by counsel for said appellee.)

Clerk's Certificate to foregoing transcript omitted in printing.

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit, viz:

EIGHTH DAY, APRIL TERM, TUESDAY, APRIL 18TH, A. D. 1933

Before Honorable Robert E. Lewis, Circuit Judge, Honorable George T. McDermott, Circuit Judge, and Honorable John C. Pollock, District Judge.

(ORDER OF SUBMISSION)

This cause came on to be heard and was argued by counsel, D. A. Taylor, Esquire, appearing for appellant, and A. T. Hannett, Esquire, appearing for appellee.

Thereupon this cause was submitted to the court.

UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT,
APRIL TERM, 1933

No. 787

B. C. HERNANDEZ, Collector of Internal Revenue for the District of New Mexico, Appellant,

v.

CHARLES ILFELD COMPANY, a New Mexico Corporation, Appellee

Appeal from the District Court of the United States for the District of New Mexico

[July 13, 1933]

D. A. Taylor (Hugh B. Woodward, U. S. Atty., Dudley Cornell, Asst. U. S. Atty., and Eugene Harpole, Spec. Atty., Bureau of Internal Revenue, were with him on the brief) for appellant.

A. T. Hannett, for appellee.

Before Lewis and McDermott, Circuit Judges, and Pollock, District Judge

MCDERMOTT, Circuit Judge, delivered the opinion of the court.

The plaintiff below, appellee here, recovered a judgment for $14,460.43 on account of an overpayment of income taxes for the year 1929, a claim for refund thereof having been denied. The question in dispute is whether the taxpayer was entitled to deduct from its income certain losses arising from the liquidation of two of its subsidiaries. The case was tried without a jury, and the facts specially found by the trial court.

The record discloses that in 1917 the plaintiff purchased all of the capital stock of the Springer Trading Company and paid therefor the sum of $40,000.00. The Springer Company was operated as an affiliated and a going concern until November, 1929. During that period the plaintiff advanced to it the sum of $69,030.27. In November, 1929, the Springer Company sold all of its assets to outside interests, paid all of its obligations, and ceased to function as a going concern. On December 23, 1929, the Springer Company turned over to the plaintiff $22,914.22, the net cash proceeds of its liquidation. In the taxable years 1918 to 1929, inclusive, the plaintiff filed consolidated corporation income tax returns in which it claimed and received allowances as deductions from its own net income the aggregate sum of $131,424.41 on account of losses sustained by the Springer Company during ten of those years; in the other two years the plaintiff returned as a part of its consolidated income profits realized by the Springer Company amounting to $12,913.88. The account of the plaintiff with the Springer Company stands as follows:

Purchase price in 1917	$40,000.00
Advances from 1917 to 1929	69,030.27
	$109,030.27
Amount realized on liquidation	22,914.22
Loss claimed to be sustained in 1929	$86,116.05
Losses of Springer Company heretofore claimed and allowed	131,424.41
Profits of Springer Company heretofore returned	12,913.88
Allowed aggregate net deductions from plaintiff's taxable income on account of losses sustained by the Springer Company	$118,510.53

The Roy Trading Company was acquired in 1920 and the facts concerning its operation and liquidation are the same as those of the Springer Company. The figures as to the Roy Company are as follows:

Purchase price in 1920	$50,000.00
Advances from 1920 to 1929	9,782.22
	$59,782.22
Amount realized on liquidation	15,106.16
Loss claimed to be sustained in 1929	$44,676.06
Losses of Roy Company heretofore claimed and allowed	61,535.17
Profits of Roy Company during four of the years during affiliation	4,407.32
Allowed aggregate net deductions from plaintiff's taxable income on account of losses sustained by the Roy Trading Company	$57,127.85

Although the trial court declined to so find, the record discloses that on December 30, 1929, there was a special meeting of the stockholders of the two subsidiaries, at which resolutions were passed to dissolve the corporations. In accordance therewith the charters of the corporations were surrendered on December 30, 1929.

Two legal questions are presented. First, were the losses sustained by reason of the liquidation of the subsidiaries, intercompany transactions during the period of affiliation of which no account should be taken? Or was the affiliation broken by the sale of all of the assets of the subsidiaries to outsiders, and the payment of the proceeds to the parent? The Collector insists that since the test of affiliation is ownership of stock, that the affiliation continues as long as the stock is owned; that the affiliation therefore continued until December 30, 1929; that the losses occurred either in November when the assets of the subsidiary were sold, or on December 23 when the proceeds were paid over to the parent, and that either date is within the period of affiliation; that it was therefore an intercompany transaction, and cannot be reckoned in arriving at the net corporate income of the consolidated corporations.

We are of the opinion that this is entirely too narrow a view to take of the transactions. It is an attempt to divide the indivisible. The sale of all of their assets by the two subsidiaries, promptly followed by their turning over of the net proceeds of the sales to the plaintiff, and the prompt surrender of their charters, are but steps in a single transaction which terminated the affiliation. A consolidated return by affiliated corporations is a statutory device to arrive at the true income of an economic unit,—an effort to prevent distortion of true income by the elimination of transactions between members of the group which do not affect the income of the group as a whole. But when the subsidiaries sold their assets, they sold them to parties outside of the group; an actual loss to the economic unit resulted. To hold that this actual loss, sustained by the plaintiff, may not be allowed because the formality of surrendering the corporate charters did not take place until a few days thereafter, is to stick in the bark. It has been so many times held that the form must give way to the substance that it has become an axiom. If the form of the transaction should prevail over the substance, on the point here presented, a clear way would be pointed out by which consolidated corporations might avoid the payment of their just taxes. A consolidated group might sell one of its subsidiaries to a stranger for an actual profit of a million dollars in cash, and avoid all taxes thereon by the very simple device of failing to surrender the corporate charter until the next succeeding taxable year. An interpretation which would permit of such a ready avoidance of taxation of a profit actually realized should not be adopted unless the words of the statute are mandatory.

Neither the statutes nor the regulations require any such holding. The whole scheme of consolidated returns deals only with corporations affiliated in fact; in the ordinary case, it would seem that affiliation commences with the acquisition of a corporation from owners outside the group; it ends with a disposal of all its properties or its stock to those outside the group. Section 141 of the Revenue Act of 1928 (26 U. S. C. A. 2141) contemplates the termination of an affiliation during the taxable year. Subsection (a) provides:

"In the case of a corporation which is a member of the affiliated group for a fractional part of the year the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group."

Notwithstanding that this statute is clear and unambiguous, the appellant maintains that under subdivision (a), Art. 37, Reg. 75, a consolidated return may not reflect the results of the transaction by which the affiliation was broken, nor the gain or loss resulting from a sale by the group to an outsider. That subdivision reads:

"Gain or loss shall not be recognized upon a distribution during a consolidated return period, by a member of an affiliated group to another member of such group, in cancellation or redemption of all or any portion of its stock; and any such distribution shall be considered an intercompany transaction."

This regulation was promulgated in aid of the statutory scheme of consolidated returns of affiliated corporations. If its application is limited to transactions which occurred during the period of affiliation, there is no occasion here to challenge its validity. If one affiliate disposes of a part or all of its assets or its stock to another member of the group, it is probable that this regulation would be applicable. If the regulation attempts to eliminate either gains or losses to the group arising by a sale of its assets to those outside the group, it is in conflict with the statutes and other regulations dealing with consolidated returns, and with the many decisions which have construed those statutes to mean that a consolidated return must reflect the true profits and losses of the affiliates as a unit. Golden Cycle Corporation v. Commissioner (C. C. A. 10) 51 F. (2d) 927, and cases therein cited.

Even upon the theory of the Collector that the subsidiaries continued to exist until December 30, 1929, the affiliation was technically terminated within the taxable year. However, we hold that, on this record, the affiliation was in fact terminated when the subsidiaries sold all of their assets to outsiders and ceased to operate as going concerns.

But the meat of the question is not when the affiliation was broken; the solution of that question is but an aid in arriving at the core of the case, and that is, whether a taxable gain or loss results when a subsidiary sells all its assets to outside interests and goes out of business. Such a transaction does result in gain or loss to the group, and to leave it out of the return will inevitably distort the true income of the group and result in precisely what the statutes undertake to prevent. In Aluminum Goods Mfg. Co. v. Commissioner (C. C. A. 7) 56 F. (2d) 568, the subsidiary sold all of its equipment and good will in 1917, and ceased to transact any business during that period. There was no formal dissolution of the subsidiary until February, 1918, when the charter was surrendered. It was held that the affiliation terminated when the subsidiary disposed of all of its assets in 1917 to those outside the group, and not in 1918, when the charter was surrendered. The loss arising from the sale was allowed as a loss of the parent company in 1917. This decision was affirmed by the Supreme Court of the United States in Burnet v. Aluminum Goods Company, 287 U. S. 544, upon the ground that whether or not the affiliation was terminated by the sale, the gain or loss resulting from the liquidation must be taken into account in arriving at the income of the parent. The case dealt with the excess profits statute, and with other regulations, but the language of the Supreme Court is unmistakable. Among other things, the Court said:

"The purpose of requiring consolidated returns by affiliated corporations was, as the Government contends, to impose the war profits tax, according to true net income and invested capital of what was, in practical effect, a single business enterprise, even though conducted by means of more than one corporation. Primarily, the consolidated return was to preclude reduction of the total tax payable by the business, viewed as a unit, by redistribution of income or capital among the component corporations by means of intercompany transactions."

"These provisions plainly do not lay down any rigid rule of accounting to be applied to consolidated returns which would exclude from the computation of taxable income the results of every intercompany transaction, regardless of its effect upon the capital or the net gains or losses of the business of the affiliated corporations. Instead, they merely disclose the purpose underlying regulations and statute to prevent, through the exercise of a common power of control, any intercompany manipulation which would distort invested capital or the true income of the unitary business carried on by the affiliated corporations. Hence, no method of accounting, in calculating taxable income upon the consolidated return, can be upheld, which would withhold from the taxpayer all benefit of deduction for losses actually sustained and deductible under the sections governing the computation of taxable income, and which at the same time would not further, in some way, the very purpose for which consolidated returns are required."

"The loss was a real one, suffered by respondent as a separate corporate entity and it was equally a loss suffered by the single business carried on by the two corporations during the period of their affiliation, ultimately reflected in the 1917 loss of capital invested in that business."

We conclude, therefore, that a capital loss resulting from the liquidation of a subsidiary is an item properly entering into the return of the parent.

The second question presented by the record is more difficult. The trial court found that from year to year, the plaintiff, in its consolidated returns, had taken credit for losses of the two subsidiaries against its own income, in an aggregate amount in excess of the losses realized on liquidation. The net loss sustained by the plaintiff on account of the operations of the Springer Company, for which credit is claimed in 1929, is $86,116.05; but during the preceding years plaintiff had claimed and been allowed against its own taxable net income, net losses of $118,510.53. The figures of the Roy Company are $44,676.06 and $57,127.85, respectively. It thus appears that if the plaintiff prevails in this action, it is allowed total credits against its taxable income on account of the Springer Company of $204,626.58, whereas its total investment therein is only $109,030.27. The figures of the Roy Company are losses claimed $101,803.91, as against a total investment of $59,782.22.

The Collector claims that losses on account of the operation of subsidiaries cannot be taken but once. The plaintiff, without endeavoring to sustain the propriety of a double deduction for losses once sustained, relies upon Remington Rand, Inc. v. Commissioner (C. C. A. 2) 33 F. (2d) 77, certiorari denied, 280 U. S. 591. In that case it appears that the corporation acquired the stock of the subsidiary for $45,000, and later sold it for $60,000. The court held that the capital gain resulting from this transaction was taxable income. The court declined to offset, as against this realized gain, earnings of the subsidiary which might have been declared as dividends and reinvested in the subsidiary, but which were not, although such earnings were accounted for as a part of the income of the affiliated group. This decision rests upon the accepted doctrine that capital gains are taxable when they are realized; what the court did was to decline to adopt the taxpayer's theory that the accumulation of earnings by a corporation is a constructive receipt of dividends and reinvestment thereof in the corporation. It also accords with the accepted rule that when a stockholder disposes of his stock, he is required to account for the capital gain, and is not allowed a deduction therefrom on account of taxes which have been paid by the corporation upon undistributed earnings. That decision, however, was accepted as controlling by the District Court of New York in United Publishers Corporation v. Anderson, 42 F. (2d) 781, in a case that is not distinguishable from the case at bar. Canal-Commercial Nat. Bank v. Commissioner, 22 B. T. A. 541, is cited by appellee. If that case has any bearing on this one, which we doubt, it supports the contention of the Collector. There a dividend paid by the subsidiary was treated as a part of the proceeds of the liquidation.

The plaintiff argues that since in arriving at capital gain, operating profits which have been returned for taxes are not taken into the equation, operating losses which have been allowed as deductions should not be considered. There is some logic and convenience in a clear separation of capital losses from operating losses; there is a rough equity in the plaintiff's position that what is sauce for the goose should be treated as sauce for the gander.

On the other hand, there is a natural repugnance to permitting the same loss to be twice deducted from taxable income. The losses heretofore allowed plaintiff, plus the loss now claimed, are nearly twice its entire investment in the subsidiaries—a manifest impossibility. Moreover, plaintiff reasons only by analogy, for the same income may be and often is taxed twice, as every stockholder of a corporation knows. It may not be fair, but it is not impossible. To say that plaintiff sustained a loss of $306,430.49 on a total investment of $168,812.49 is to say what cannot be. Nor is it clear that the losses taken in preceding years were operating losses, although they probably were.

A corporation which each year deducts the operating losses of its subsidiary from its own income, ought not to be allowed to accumulate those losses and take them again when the subsidiary is finally liquidated. In the instant case, advances made to the subsidiary corporations from year to year were dissipated in the business, and the losses were used to offset the other income of the plaintiff. These advances are now used to augment the cost of the subsidiary, and the losses again utilized to offset other corporate income.

This argument on principle is fortified by the decision of the Supreme Court of the United States in Burnet v. Aluminum Goods Company, 287 U. S. 544. It there appeared that the subsidiary sustained operating losses in 1914, 1915, 1916, and 1917. During the first three years, there was no provision for consolidated returns, and the parent was neither charged with undistributed earnings of the subsidiary, nor credited with its losses. For those years, therefore, it was entirely fair that operating losses or gains should be ignored when the parent disposed of the subsidiary, for its own income tax had not been affected by its subsidiary's losses or its undistributed gains. But in 1917 the law permitted a consolidated return which carried into the parent's return the operating gain or loss of its child. So when the subsidiary was liquidated, the operating loss of 1917 was deducted from the capital loss on liquidation. In that connection the Supreme Court said:

> "So far as the loss from operation of the Sales Company in earlier years contributed to respondent's capital loss in 1917, deduction of the latter in the consolidated return involved no double deduction of losses of the business of the two companies during the period of their affiliation. As respondent's total loss in 1917 was reduced, before deduction in the consolidated return, by the amount of the operating loss of the Sales Company for that year, there was no duplication of any losses accrued or sustained in that year. * * * While equitable principles of accounting applied to the calculation of the net income of the business unit do not permit deduction of the loss twice, they do require its deduction once."

A case squarely in point is Burnet v. Riggs National Bank (C. C. A. 4) 57 F. (2d) 980, strongly relied upon by appellee in support of its contentions on the first question presented. In that case it appears that the taxpayer suffered a capital loss in the liquidation of a subsidiary of $94,949.07. Prior to the liquidation, $41,485.22 had been claimed and allowed as an operating loss of the subsidiary against the operating income of the parent corporation. In deciding the contention that the taxpayer was entitled to the entire loss, the court said:

"On the other hand, we are convinced that the Board of Tax Appeals was right in refusing to allow the claim of the Riggs Bank for the entire loss as at the time of the liquidation, because of the fact that a part of this loss had been deducted by the bank in its return for the first part of the year 1922. To allow the entire loss as of June [illegible]0, 1922, would have resulted in respondent receiving credit twice for a part of the loss. David M. Goodrich v. Williams H. Edwards, 255 U. S. 527, 41 S. Ct. 390, 65 L. Ed. 758; United States v. Ludey, 274 U. S. 295, 47 S. Ct. 608, 71 L. Ed. 1054. Double credits equally with double taxation are to be avoided where possible in construing laws passed by Congress."

It is our conclusion, therefore, that there should be deducted from the loss on liquidation, net losses which the appellee has been theretofore allowed from its own taxable income on account of the operation of these subsidiaries. The losses already allowed being in excess of the total losses sustained by reason of the purchase, operation and liquidation of these subsidiaries, judgment should go for the defendant.

Reversed.

(JUDGMENT).

FORTY-FIRST DAY, APRIL TERM, THURSDAY, JULY 13TH, A. D. 1933

Before Honorable Robert E. Lewis and Honorable Orie L. Phillips, Circuit Judges

This cause came on to be heard on the transcript of the record from the District Court of the United States for the

District of New Mexico and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed; that this cause be and the same is hereby remanded to the said District Court for a new trial; and that B. C. Hernandez, Collector of Internal Revenue for the District of New Mexico, appellant, have and recover of and from Charles Ilfeld Company, a New Mexico Corporation, appellee, his costs herein and have execution therefor.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 787

B. C. HERNANDEZ, Collector of Internal Revenue for the District of New Mexico, Appellant,

vs.

CHARLES ILFELD COMPANY, a New Mexico Corporation, Appellee

PETITION FOR REHEARING

Now comes the appellee Charles Ilfeld Company by its attorney A. T. Hannett, and respectfully petitions the Court for a re-hearing in the foregoing entitled cause, and as grounds for such Motion, respectfully shows to the Court:

I

That the Court, in its opinion and Judgment handed down and entered in this cause, has overlooked the fact that the consolidated return upon which the appellee claims a refund was made for the year 1929 and that the statute controlling in this cause is Section 2141, Title 26 U. S. C. A., and the rules promulgated thereunder, as therein provided for; and that the decision of this Court is contrary to the express provision of said Statute, and the rules promulgated thereunder, in this:

(a) It was and is contended by the appellant in this cause that subdivision (a) of Article 37 and subdivision

(a) of Article 40 of Regulations 75, promulgated by the United States Treasury Department December 31, 1931, was and is applicable and controlling, which subdivisions read as follows:

"Article 37, Regulations 75—Dissolutions—Recognition of Gain or Loss.

(a) During Consolidation Return Period: Gain or loss shall not be recognized upon a distribution during a consolidated return period by a member of an affiliated group to another member of such group, in cancellation or redemption of all or any portion of its stock; and any such distribution shall be considered an intercompany transaction."

Article 40 (a), Regulations 75, reads:

"(a) Resulting from Transactions during Consolidated Return Period.

Intercompany accounts receivable or other obligations which are the result of intercompany transactions during a consolidated return period shall not be deducted as bad debts during a consolidated return period."

It is contended by the appellee and petitioner herein, that subdivision (b) of Article 37 and subdivision (c) of Article 40, Regulations 75, are controlling. Article 37 (b) of Regulations 75 reads:

"After Consolidated Return Period.

Any such distribution after a consolidated return period, whether in complete or partial liquidation, shall be treated as a sale of stock, and the adjustments specified in Articles 34 and 35 will be made, and Article 36 will be applicable."

Subdivision (c) Article 40 of Regulations 75 reads:

"Limitation on Allowance after Consolidated Return Period.

The rules applicable to the allowance of losses upon the sale of bonds shall be applicable to the allowance after the consolidated return period as a bad debt of an intercompany account receivable or other obligation resulting from an intercompany transaction during the consolidated return period. (See Article 35.)"

This Court in its decision and opinion ruled in favor of the appellee and held, correctly, that the sale and liquidation in the instant case was not an intercompany transaction. Therefore, subdivision (b) of Article 37 and subdivision (c) of Article 40, Regulations 75, are controlling. Under subdivision (b) and subdivision (c) of Articles 37 and 40, respectively, such distribution after a consolidated return period, whether in complete or partial liquidation shall be treated as a sale of the stock and the adjustment specified in Articles 34 and 35 will be made and Article 36 will be applicable.

II

The decision of this Court is in conflict with the following decisions:

United States Circuit Court of Appeals for the 7th Circuit in the case of Aluminum Goods Manufacturing Company v. Commissioner, 56 Fed. (2d) 568;

United States Circuit Court of Appeals for the 2nd Circuit in the case of Remington Rand, Inc. v. Commissioner, 33 Fed. (2d) 77 (Certiorari denied, 280 U. S. 591);

District of New York in the case of United Publishers Corporation v. Anderson, 42 Fed. (2d) 781;

Supreme Court of the United States in the case of Burnet v. Aluminum Goods Manufacturing Company, 77 L. Ed. 333, 287 U. S. 544;

United States Circuit Court of Appeals for the 4th Circuit in the case of Burnet v. Riggs National Bank, 57 Fed. (2d) 980;

Board of Tax Appeals, in the following cases:

Apartment Corporation v. Commissioner, 26 B. T. A. 849;

Carey Salt Company v. Commissioner, 26 B. T. A. 675;

Liebes H. & Co. v. Commissioner, 23 B. T. A. 787;

Roy & Titcomb, Inc., 24 B. T. A. 969.

Wherefore, appellee prays that a re-hearing be granted in this cause.

Respectfully submitted.

A. T. Hannett, 509-11 Sunshine Bldg., P. O. Box 497, Albuquerque, New Mexico, Attorney for the Appellee.

Supporting Certificate of Counsel

I, the undersigned A. T. Hannett, Attorney for the appellee and petitioner herein, do hereby certify that the foregoing Petition is filed in good faith, that I verily believe that the points and grounds set forth in the foregoing Petition are well taken and that said Petition should be granted.

A. T. Hannett.

Filed Aug. 10, 1933. Albert Trego, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT,
SEPTEMBER TERM, 1933

No. 787.

B. C. HERNANDEZ, Collector of Internal Revenue for the District of New Mexico, Appellant,

v.

CHARLES ILFELD COMPANY, a New Mexico Corporation, Appellee.

Appeal from the District Court of the United States for the District of New Mexico

[October 10, 1933]

On Petition for Rehearing

Wm. J. Barker, U. S. Atty., E. Barrett Prettyman, Gen. Counsel, Bureau of Int. Rev., D. A. Taylor and Warren W. Cole, Spec. Attys., Bureau of Int. Rev., for appellant.

A. T. Hannett for appellee.

John G. Buchanan, Paul G. Rodewald, David B. Buerger, and Smith, Buchanan, Scott & Gordon filed a brief amici curiæ.

Robert H. Montgomery filed a brief amicus curiæ.

Before Lewis and McDermott, Circuit Judges, and Pollock, District Judge

McDERMOTT, Circuit Judge, delivered the opinion of the court.

In an involved and somewhat confusing petition for rehearing, appellee asserts that it is entitled to a double deduction for the losses of its subsidiaries because of regulations which were not set out in either brief or discussed in written or oral argument, and the court is chided for "ignoring" such regulations. Counsel for other litigants have volunteered to act as friends of the court, all asserting the legal right to deduct losses a second time, and reminding us that if there is a crevice in the dike by which the actual income of affiliated corporations escapes taxation, it is not the function of the judiciary to stop the leak. This widespread and acute interest indicates that the crevice is not of insignificant dimension.

But in all this welter of briefs, no one has suggested any reason why a double credit for the same loss should be allowed, except the inept analogy that an individual stockholder is entitled to his capital loss on sale of his stock without diminution for corporate losses—an analogy which overlooks the controlling circumstance that the individual's personal tax was not reduced through the years by the losses of his corporation. Counsel for appellee and amici curiæ take the bald position that, right or wrong, the Treasury Department has so enacted.

Counsel on both sides agree that the case is ruled by Tr. Reg. 75, issued pursuant to Section 141(B) of the Revenue Act of 1928. We therefore assume, without deciding, that Congress may delegate to the Commissioner the power to legislate and to contract on the troublesome problem of affiliated corporations. An examination of these technical regulations serves to strengthen our conclusion that the Treasury Department intended that losses actually realized from the operation and dissolution of a subsidiary should be deducted once, but not twice, from the income of the parent. Whether, as a matter of accounting, it was intended that such losses or gains should be treated as occurring within or without the consolidated return period is not so clear. The same honest and wholesome result is achieved by either method; the point becomes important only in light of appellee's contention that if the loss is treated as occurring after the consolidated period, it may be taken a second time.

Section 37(a), Tr. Reg. 75, provides that neither gain nor loss shall be recognized upon a distribution in cancellation of stock made during a consolidated return period. Section 37(b) provides that a distribution made after such period shall be treated as a sale of stock and adjustments made as provided in Articles 34, 35, and 36. The controversy presented to the court upon the first hearing centered about the question of which of these sections governed. Arguendo, we said that the affiliation was terminated by a liquidating sale of the assets of a subsidiary to an outsider accompanied, as a part of the same transaction, by a distribution of the proceeds. The decision however was distinctly predicated upon the point that whenever it was considered as occurring, a taxable gain or loss resulted.

Counsel for appellee, upon the assumption that we held that Section 37(b) was applicable, now directs our attention to 34(c)(2) of the Regulations, which provides for a deduction from the aggregate bases of the stock as determined by 34(c)(1) the aggregate of the losses sustained during each of the consolidated return periods "(including only the taxable year 1929 and subsequent taxable years)." The argument is made that the Commissioner thereby is forbidden to take into account losses prior to 1929. That is to say, counsel contend that operating losses prior to 1929 may be twice deducted by a taxpayer exercising the option given by Section 141(a) of the Revenue Act of 1928—an unjust and anomalous result not lightly to be imputed to the Treasury Department, and the mischiefs of which are sufficient "to tip the scales when arguments are nicely balanced," to borrow the forceful language of Justice Cardozo in Woolford Realty Co. v. Rose, 286 U. S. 319.

But even upon appellee's assumption, the flaw in its case is that Section 34(c)(2) does not stand alone; it is a part of a section providing for an intricate determination and adjustment of the shares of stock of a subsidiary immediately prior to the sale, a determination and adjustment which doubtless was intended to eliminate the apparent anomaly of the parenthetical clause in 34(c)(2). At any rate, if Article 37(b) is applicable the Commissioner must first determine and adjust the bases of the stock immediately prior to the sale. A strong burden was cast upon appellee to prove that the Commissioner erred in determining and adjusting the bases of the stock as required by Section 34. Lucas v. Structural Steel Co., 281 U. S. 264. There is no finding by the trial court as to the adjusted bases of the stock, nor any conclusion that the Commissioner erred in that regard. Without such proof, the Commissioner's determination cannot be set aside.

Counsel for amici curiæ argue that, irrespective of the regulations, earlier operating losses may not be deducted from capital losses sustained on final liquidation. We are cited to cases where courts have properly drawn a distinction between capital losses and operating losses. That there is such a distinction cannot be gainsaid; and it may also be admitted that mental confusion follows in the wake of mingling them. But this confusion is injected into the equation by the statutes which require capital gain to be accounted for as taxable income and permit capital losses to be deducted from operating income. Where operating losses impair the capital of corporations, as here, they are capital losses in the sense that they represent losses of the capital investment. If a corporation's capital was originally $100,000 and it was entirely dissipated in operating losses for which deductions were made through the years, it can hardly be said that the entire loss was a capital loss realized during the year of liquidation. Neither the Supreme Court of the United States nor the Circuit Court of Appeals for the Fourth Circuit was beguiled into a double allowance for the same loss by arguments predicated on nomenclature. Burnet v. Aluminum Goods Company, 287 U. S. 544; Burnet v. Riggs National Bank (C. C. A. 4) 57 F. (2d) 980.

In his brief in opposition to the rehearing, the Collector renews his insistence that Art. 37(a) exempts from taxation any profits, and denies deduction for any losses, that grow out of the liquidation of a subsidiary. The brief refers us however to an enlightening and authoritative article by the Hon. Andrew W. Mellon, the Secretary of the Treasury who approved Regulation 75, published in the March, 1929, issue of The National Income Tax Magazine (Vol. VII, 3, pp. 105-106). Mr. Mellon classifies dissolutions of subsidiaries into three types, the third type being "where it is decided to abandon the business and close out the affairs of the subsidiary," which is clearly the case here. He then says "any gain should be taxed and any loss allowed as a deduction in the case of a dissolution of the third type." He proceeds:

> "Inasmuch as it would be impossible to prescribe a rule which would distinguish the types and which would be susceptible of sound administration, and in view of the fact that the benefit of losses which are properly allowable are not denied if the loss is realized before the dissolution or if the subsidiary is not a member of the group at the time of the dissolution, it was concluded that the rule adopted in the Regulations, treating all dissolutions as intercompany transactions, was the safest and best and would prove the most satisfactory."

From this it appears that the Treasury Department construes the Regulations as permitting a parent to deduct losses realized on the winding up of a subsidiary, no matter whether the loss is treated as realized before or after dissolution. Such interpretation of the Department is in accord with the common sense view taken of the matter by the Supreme Court in Burnet v. Aluminum Goods Company, 287 U. S. 544, and with our first opinion. It is also in accord with the statement of government counsel to the Ninth Circuit Court of Appeals in McLaughlin v. Pacific Lumber Company, — F. (2d) —, that "the present trend of decisions, both in the Board of Tax Appeals and in the courts" is in favor of permitting such deductions.

As so interpreted, Section 37(a) does not refer to the actual gain or loss sustained when the assets of a subsidiary are disposed of, but only to the distribution by which the shares are canceled or redeemed. Of course if the gain or loss on the sale of the assets is accounted for in the consolidated return, it should not again be taken into account when the entry is made offsetting the distribution by a cancellation of the shares. If such is the administrative construction of the Regulation, it does no violence to the settled rule that affiliated corporations must account for gains, and are entitled to deduct losses, that inure to the group. But under such construction, a loss on liquidation of a subsidiary is a proper deduction, as we held.

But all the roads lead to Rome. Whether the loss is treated as occurring during or after a consolidated return period, it is an actual realized loss that should be taken into account; but we are not persuaded by the multitude of counsel that the statute and regulations contemplate it should be taken twice. The petition for rehearing is therefore denied.

TWENTIETH DAY, SEPTEMBER TERM, TUESDAY, OCTOBER 10TH, A. D. 1933

Before Honorable Robert E. Lewis and Honorable Orie L. Phillips, Circuit Judges

(ORDER)

This cause came on to be heard on the petition of appellee for a rehearing herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

MOTION FOR STAY OR MANDATE

Now comes Charles Ilfeld Company, appellee in the above entitled cause, by its attorney A. T. Hannett and respectfully moves the Court for an order staying the issuance of the mandate in the above entitled cause, under and pursuant to Rule 29, Subdivision 3 of this Court, Section 8-D of the Act of February 13th, 1925, of the Congress of the United States, and Subdivision 6 of Rule 35 of the Rules of the Supreme Court of the United States of America; and as grounds for such motion respectfully shows to the Court:

I

That the judgment of the United States District Court for the District of New Mexico was, on the 13th day of

July, 1933, reversed by this Court; and that the petition for rehearing filed thereafter, was on the 10th day of October, 1933, denied by this Court.

II

That the appellee will, with all convenient speed, petition the Supreme Court of the United States of America to issue a writ of certiorari to this Court to review the decision of this Court in this cause.

III

The appellee has this day ordered the clerk of this Court to make up the record of the proceedings had in this Court, pursuant to the rules of the Supreme Court of the United States and the Statutes of the United States in such cases made and provided, and upon receipt thereof, will forthwith attach his petition thereto, to the Supreme Court of the United States praying for a writ of certiorari.

IV

The appellee further shows that unless a stay is granted, it will not in all probability be possible for the appellee to prepare and cause to be filed the record and petition for said writ of certiorari with the clerk of the Supreme Court of the United States before the time said mandate will issue under the law and the rules of this Court.

A. T. Hannett, P. O. Box 497, Albuquerque, New Mexico, Attorney for Appellee.

Filed Oct. 16, 1933. Albert Trego, Clerk.

TWENTY-FIRST DAY, SEPTEMBER TERM, THURSDAY, OCTOBER 19TH, A. D. 1933

Before Honorable Robert E. Lewis and Honorable Orie L. Phillips, Circuit Judges.

(ORDER)

This cause came on to be heard on the motion of appellee for a stay of the mandate herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under Section 3 of Rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

(CLERK'S CERTIFICATE)

UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

I, Albert Trego, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of New Mexico, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Tenth Circuit, under the supervision of its clerk, and full, true and complete copies of certain pleadings, record entries and proceedings, including the opinions, (except full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States), had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said Circuit Court of Appeals wherein B. C. Hernandez, Collector of Internal Revenue for the District of New Mexico, was appellant and Charles Ilfeld Company, a New Mexico corporation, was appellee, No. 787, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at office in the City of Denver, Colorado, this 24th day of October, A. D. 1933.

Albert Trego, Clerk of the United States Circuit Court of Appeals, Tenth Circuit. (Seal United States Circuit Court of Appeals, Tenth Circuit.)

[fol. 161] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 18, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,182. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 579. Charles Elfeld Company, Petitioner, vs. B. C. Hernandez, Collector of Internal Revenue for the District of New Mexico. Petition for a writ of certiorari and exhibit thereto. Filed November 10, 1933. File No. 579, O. T., 1933.

(4391)